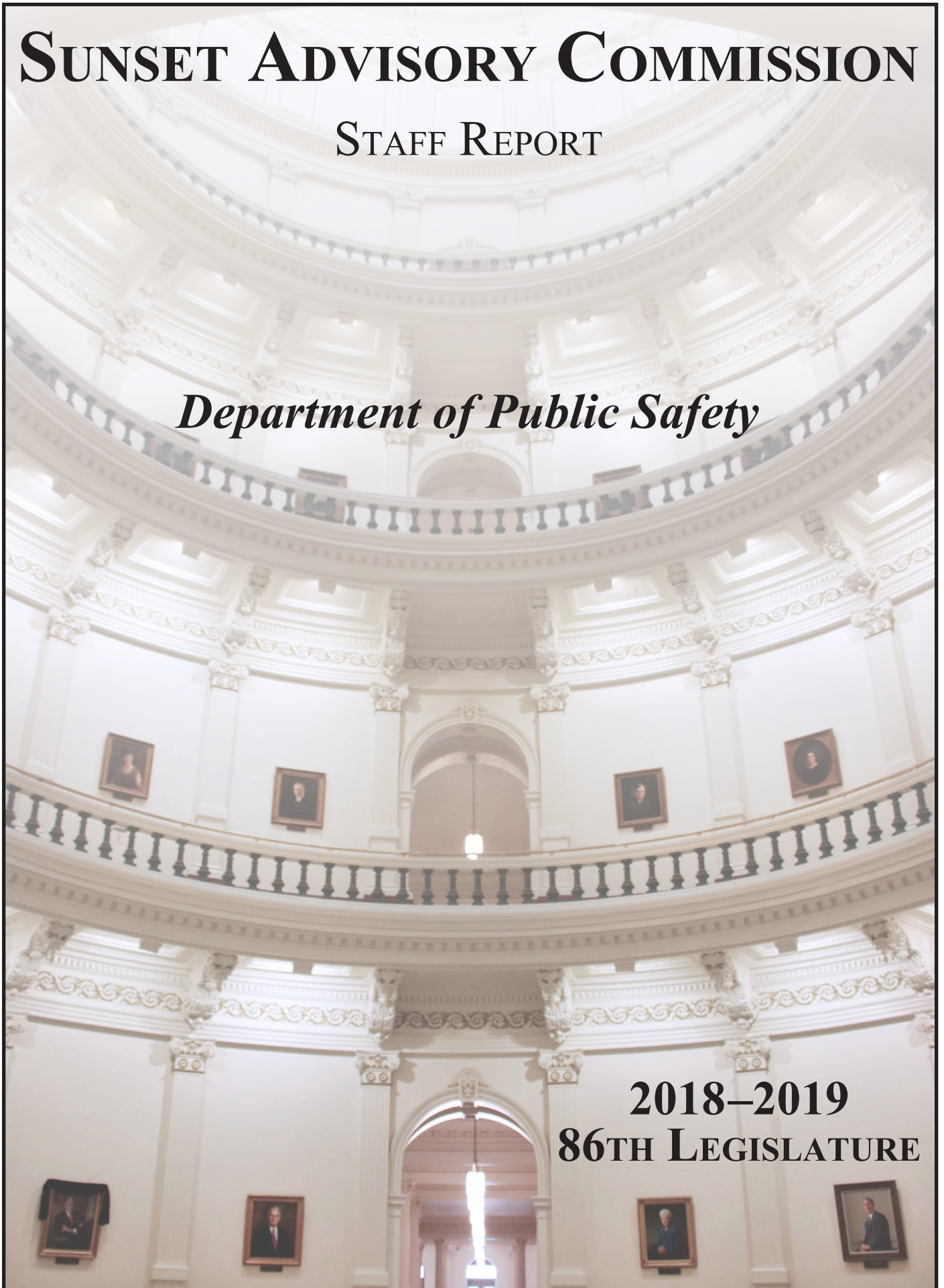


# SUNSET ADVISORY COMMISSION

## STAFF REPORT

### *Department of Public Safety*

**2018–2019**  
**86TH LEGISLATURE**



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*Cover Photo: The Texas Capitol rotunda houses the Texas Governors and Presidents Portrait Gallery. The gallery includes portraits of every government leader in Texas' history, including several presidents when Texas won its independence from Mexico and became a republic. Photo Credit: Janet Wood*

# **DEPARTMENT OF PUBLIC SAFETY**

**SUNSET STAFF REPORT**

**2018-2019**

**86TH LEGISLATURE**

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## ***HOW TO READ SUNSET REPORTS***

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

### 1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

**FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.**

### 2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

### 3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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# **SUMMARY OF SUNSET STAFF RECOMMENDATIONS**





# SUMMARY

Since its establishment in 1935, the Department of Public Safety's (DPS) responsibilities have expanded enormously. Growing from the Texas Highway Patrol and Texas Rangers that first made up the department, DPS now handles modern law enforcement concerns such as human trafficking, transnational gangs, and counterterrorism investigations as well as border security. Over the years, the Legislature has also assigned non-law enforcement functions to DPS, such as statewide emergency management along with numerous regulatory programs such as vehicle inspection, private security, and the license to carry a handgun.

Sunset staff did not engage in evaluating DPS' law enforcement functions such as patrol operations or criminal investigations as these areas generally lie outside the expertise of legislative oversight agencies. The department appears to perform this work well, receiving accolades from many of its partners and national attention for innovative programs such as better identifying young victims of human trafficking during routine traffic stops. Instead, the Sunset review focused on DPS' administrative operations and non-law enforcement functions and found several areas in need of improvement. While DPS rightfully prioritizes its police work, it also must carefully administer its other important duties.

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*While DPS rightfully prioritizes its police work, it also must carefully administer its other important duties.*

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The department's driver license and motorcycle safety training programs have not been administered well at DPS and could benefit from being transferred to more appropriate, non-law enforcement agencies like the Texas Department of Motor Vehicles and the Texas Department of Licensing and Regulation, respectively. The driver license program in particular has continually struggled to meet customer service expectations of the millions of Texas residents that rely on its services. However, transferring such a large, complex program requires extensive analysis of operational and technology issues that need more time and expertise than a Sunset review allows. Instead, DPS and the Texas Department of Motor Vehicles should conduct a joint analysis of the costs and opportunities in transferring this program.

In reviewing DPS' regulatory functions, Sunset staff found the department's current approach to overseeing the private security industry delves too deeply into purely business affairs without a clear nexus to public safety. The review also found that continuing to have a separate, quasi-independent Private Security Board creates dueling regulatory authority, inefficiencies, and unnecessary risks for DPS, and that the board could better serve the state as an advisory body. Further, DPS needs several changes in its licensing and enforcement approach to treat licensees more fairly and consistently, and to ensure state resources are not wasted. Some of these needed changes include ensuring that only criminal history convictions truly related to the regulated profession preclude

licensure and using risk-based inspections. Finally, Sunset staff identified 16 licenses and registrations for elimination because the regulation is simply unnecessary to protect the public.

The security of the Texas border with Mexico is a subject of much debate, differing opinions, and political intrigue, as well as a huge factor in Texas' economy. The state needs goods and people to pass the border legally and safely, while protecting Texans from criminal activity. The state's portion of these difficult and dangerous border responsibilities have fallen primarily to DPS, with a legislative investment of more than \$1.4 billion for the current and previous biennium. With this investment comes a legislative expectation of information on the return or impact the funding has on border safety. Objectively measuring the success of border security is not easy, and factors beyond the control of DPS or any law enforcement entity can affect the level of criminal activity along the border. Even recognizing these difficulties, the review found DPS' data collection and analysis of border security impacts need improvement, and that tracking and publicly providing certain crime statistics could help the state more effectively plan for future investment in the program.

In addition to border security data shortcomings, the review found DPS has other data and information technology challenges. For example, DPS relies on an unmanageable patchwork of databases to track its 10 regulatory programs, and struggled to provide consistent, accurate numbers about its regulatory activities. Likewise, DPS needed a month to provide a list of all its active contracts and their total value. The department is working to address these issues but in the meantime, the shortcomings impede DPS' ability to assess its performance and manage strategically.

The following material highlights Sunset staff's key recommendations on the Department of Public Safety.

## Issues and Recommendations

### *Issue 1*

#### **DPS Has Not Maximized Its Resources to Adequately Improve Driver License Customer Service.**

The vast majority of adults in Texas — over 20 million — have a driver license or identification card issued by DPS. Issuing more than four million of these security-sensitive documents annually is a huge workload for DPS, and the department's staff works hard to carry out this function. However, wait times at driver license offices and the call center have continued to increase, despite significant financial investments by the Legislature to improve this program, with wait times of more than an hour at several large offices, and just 20 percent of phone calls being answered.

Within a law enforcement agency, the driver license program cannot compete with public safety priorities. Over the years, DPS has used driver license funding for its other programs and has not consolidated or closed low volume driver license offices to maximize resources to meet demand. DPS has also not invested in basic technology that could significantly improve customer service. Having the driver license function housed in DPS is also confusing to the public who frequently expect the Texas Department of Motor Vehicles (TxDMV) to issue driver licenses as well as vehicle titles and registrations, like 42 other states do. In fact, the Legislature created TxDMV in 2009 to ensure its functions received more focus and attention than they received at TxDOT, and to improve customer service. Transferring the driver license program to TxDMV, an agency focused on customer service, is worth considering, but only after detailed analysis of the technology, resources, and budgetary impacts involved. Having DPS

and TxDMV jointly analyze the potential of this transfer would provide the information needed for the Legislature to consider before making this significant change.

### **Key Recommendations**

- Require DPS to develop and implement a plan to close inefficient driver license offices.
- Direct the Department of Public Safety and Texas Department of Motor Vehicles to perform a joint analysis on opportunities and challenges of transferring the driver license program to TxDMV.

## ***Issue 2***

### **DPS Should Better Measure and Report Its Border Security Performance to Allow the State to Determine the Return on Its Significant Investment.**

The Legislature significantly increased its investment in border security for the last two biennia, appropriating over \$1.4 billion to DPS alone. Since 2015, the Legislature has required every state agency receiving border security funds to report certain performance indicators to be able to evaluate the state's return on investment, but measuring the success of this work is incredibly challenging. Several factors beyond the control of DPS or any law enforcement entity affect the level of criminal activity along the border, such as the weather's impact on harvests of certain illicit drugs or economic and political circumstances in other countries. With this reality in mind, the best chance the state has at assessing the impact of its investment in border security is to examine three categories of information: the amount of resources deployed; trends in outputs; and whether all of these measures have resulted in less border-related crime. However, attributing outcomes, like lower crime rates, directly to specific inputs, like state funding for border security, is extremely complicated, with no consensus on how best to measure whether the state's efforts to secure the border are succeeding.

As such, DPS prefers to measure and show the effectiveness of its border security efforts in terms of the quantity of resources deployed and intelligence gained. However, this approach does not provide sufficient information to the public and policymakers about the return on investment for border security funds. Without examining impacts to crime, while also taking into account the quantity of resources deployed as well as shifts in output data, neither DPS nor the Legislature can effectively plan for the state's future investments in border security. Understanding the impact of DPS' border security efforts is also important in the event of significant changes to federal border security efforts that many anticipate, with some already in progress, under the current presidential administration.

### **Key Recommendations**

- Require DPS to track and publicly provide crime statistics as part of the reporting of its border security performance.
- Direct DPS to develop a system for collecting and maintaining outcome data related to its border security mission.
- Direct DPS to regularly report to members of the Legislature threat levels along the Texas-Mexico border.

## ***Issue 3***

### **Overregulation and Unclear Authority Hamper DPS' Private Security Program.**

The private security program at DPS cannot be fully integrated into the agency's regulatory processes, in part due to the quasi-independent Private Security Board and conflicting authority between this board and the Public Safety Commission. As Sunset has discovered, administrative attachment of a quasi-independent board to a larger agency is unworkable and creates significant inefficiencies. Further, overregulation of the private security industry and a web of registration, endorsement, and licensure requirements contribute to a heavily bureaucratic licensing system that does not meaningfully promote a public interest and creates barriers to doing business in Texas. While Texas continues to have a demonstrable need to regulate individuals and companies that provide direct private security services, simplifying the regulatory structure would better focus DPS' resources on regulation that has a clear nexus to public safety.

#### **Key Recommendations**

- Reconstitute the Private Security Board as an advisory committee.
- Deregulate 10 registrations for individuals and entities that do not directly provide private security services.
- Require individuals who provide private security services to obtain a license, rather than a registration or endorsement, and remove requirements for regulated individuals to be affiliated with companies.

## ***Issue 4***

### **The Department's Nonstandard Regulatory Processes Compromise Effective and Fair Operations.**

The department struggles to harmonize administration of its 10 regulatory programs with its more important law enforcement operations. Weak data management and tracking have reduced the transparency of DPS' regulatory operations, and hampered DPS' ability to oversee these programs. Also, nonstandard elements of licensing and enforcement processes, brought about by a patchwork of statutes and misplaced focus, create barriers to licensure and prevent DPS from being able to efficiently manage all of its regulatory programs. The department's primary law enforcement duties clearly take precedent over administering regulatory programs, but regulatory administration needs to be treated as a distinct, important role for DPS.

#### **Key Recommendations**

- Require DPS to track and annually report regulatory information on its website.
- Remove unnecessary, subjective qualifications for applicants.
- Establish clear authority for DPS to receive, investigate, and resolve complaints, including informally resolving complaints.
- Direct DPS to adopt a risk-based inspection process and provide DPS a full range of sanctions to enforce regulations.

## ***Issue 5***

### **Three DPS Regulatory Programs Are Not Necessary to Protect the Public.**

Regulation of precursor chemical and laboratory apparatus sales, peyote distributors, and ignition interlock device vendors is duplicative of existing laws and does not meaningfully protect the public. Thorough regulation by the U.S. Drug Enforcement Agency and existing criminal penalties make state regulation of precursor chemical and laboratory apparatus sales and peyote distributors unnecessary. Further, existing criminal laws provide better deterrence for illicit use of precursor chemicals, laboratory equipment, and peyote. In addition, DPS already oversees the calibration and maintenance of ignition interlock devices, so the regulation of vendors of these devices has only a nominal impact to public safety. Ultimately, Sunset staff found these three regulatory programs are no longer needed and should be discontinued.

#### **Key Recommendations**

- Discontinue regulation of precursor chemical and laboratory apparatus sales and transfers.
- Discontinue duplicative registration of peyote distributors.
- Discontinue regulation of ignition interlock device vendors.

## ***Issue 6***

### **DPS' Management of the Motorcycle Safety Program Wastes State Resources.**

In 1983, the Legislature established a motorcycle training and safety program at DPS and an all-terrain vehicle (ATV) safety program six years later. Texans continue to benefit from motorcycle and ATV safety training; almost 34,000 people took the motorcycle safety course and more than 1,000 people took the ATV course in 2017. However, providing costly material support, such as instructional material, helmets, and loaned motorcycles, to training providers is not an appropriate use of public resources. Further, DPS' heavy involvement in instructor training and directly providing motorcycle safety courses is unnecessary and not typical of state regulatory programs. In 2015, the Legislature transferred the driver education and safety program to the Texas Department of Licensing and Regulation (TDLR), where rules have been streamlined and the program has been refocused to improve customer service to schools, instructors, and students. The motorcycle and ATV safety programs would be better housed at TDLR, aligning regulation with similar programs and focusing on assisting customers in a more appropriate way for the state.

#### **Key Recommendations**

- Transfer the motorcycle and ATV safety training programs to TDLR.
- Direct DPS to discontinue subsidizing motorcycle safety training course operators and providing motorcycle safety training.

## ***Issue 7***

### **DPS Needs Enhanced Accountability and Efficiencies in Contracting and Purchasing.**

DPS manages more than 1,000 active contracts with a total value of \$1.6 billion. At the time of this review, DPS was experiencing some growing pains with its contracting and procurement processes, particularly in establishing and implementing agencywide procedures to comply with the recent strengthening of state purchasing requirements. Some of DPS' difficulty is attributable to staff not being trained on new state procurement requirements and the lack of functionality in DPS' electronic procurement system. Making matters worse is that DPS' procurement process is replete with bureaucracy, which causes unnecessary delays. DPS also does not have a system capable of collecting broad data to identify potential issues in its procurement process as well as a consolidated location for all contract information. DPS has begun making improvements to its contracting and purchasing operations, but needs to ensure these improvements address the issues Sunset staff identified.

#### **Key Recommendations**

- Direct DPS to analyze its contracting and purchasing procedures, and align its levels of review, approval, and accountability with the value and complexity of the contracts and purchases.
- Direct DPS to track, analyze, and report contracting and purchasing data through all phases of the procurement process.
- Direct DPS to maintain all contract-related documentation in a central location and post up-to-date contract information on its website.

## ***Issue 8***

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

The Department of Public Safety's role of protecting the public and providing statewide law enforcement continues to be important to Texas, more than 80 years after DPS' establishment. Only a statewide organization can coordinate law enforcement and public safety activities across jurisdictional boundaries and Texas continues to need DPS and its main programs, including highway safety, criminal law enforcement, border security operations, driver license, and emergency management.

#### **Key Recommendation**

- Continue the Department of Public Safety for 12 years.

## **Fiscal Implication Summary**

Overall, recommendations from two issues would result in a negative fiscal impact of about \$601,300 to the General Revenue Fund, primarily from discontinuing state regulation of individuals and businesses that does not improve public safety. The recommendation to discontinue providing state-funded materials and training for the motorcycle safety program would result in a positive fiscal impact of about \$463,000 to the dedicated Motorcycle Education Fund. The fiscal implication of these three recommendations is summarized on the following page.



**Issue 3** — The recommendations to eliminate unnecessary layers of regulation and deregulate several security industry groups would result in negative fiscal impact of about \$912,000 from the loss of licensure fee revenue, offset by about \$378,000 in administrative cost savings. Reconstituting the Private Security Board as an advisory committee would also save about \$6,000 in travel reimbursements. Eliminating unnecessary regulation would reduce the number of full-time positions necessary for administering the private security program by seven.

**Issue 5** — Discontinuing state regulation of ignition interlock device vendors would result in a small negative fiscal impact resulting from a loss of about \$185,900 in fee revenue, but would save about \$112,600 in administrative expenses.

**Issue 6** — The recommendation to stop providing material support to motorcycle safety course providers would result in a savings of an estimated \$171,000 each year to the general revenue dedicated fund associated with the motorcycle safety program. Eliminating state-sponsored training of safety course instructors and mobile courses would save about \$292,000 and reduce the positions necessary to support the program by three. The remaining six full-time positions would transfer to the Texas Department of Licensing and Regulation along with the remaining funding.

### ***Department of Public Safety***

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Loss to the General Revenue Fund</b>	<b>Savings to the Motorcycle Education Fund (General Revenue-Dedicated)</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$496,600	\$1,097,900	\$463,000	-10
2021	\$496,600	\$1,097,900	\$463,000	-10
2022	\$496,600	\$1,097,900	\$463,000	-10
2023	\$496,600	\$1,097,900	\$463,000	-10
2024	\$496,600	\$1,097,900	\$463,000	-10





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# AGENCY AT A GLANCE



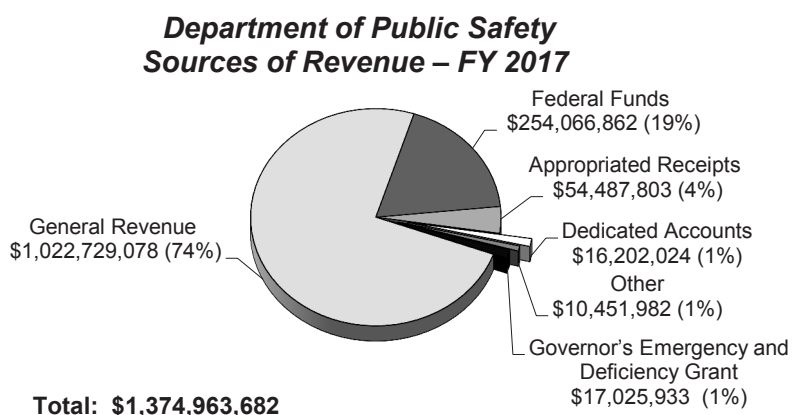
# AGENCY AT A GLANCE

The Legislature established the Department of Public Safety (DPS) in 1935 by combining the Texas Rangers and Texas Highway Patrol to enforce laws protecting public safety and to prevent and detect crime.<sup>1</sup> Over time, DPS has received additional responsibilities, expanding its operations into border security, counterterrorism, emergency management, and an array of regulatory services. Following its 2009 Sunset review, the department reorganized into functional divisions and instituted a more cohesive regional alignment for field operations. During this growth and change, the department's mission — to protect and serve Texas — remained the same. To fulfill this mission, DPS performs the following key functions:

- Enhances public safety by enforcing traffic safety and commercial vehicle laws; investigating and interrupting organized crime and terrorism; investigating major violent crimes and public corruption; and supporting border security operations
- Provides driver license services and issues identification certificates
- Prepares for and responds to emergencies and coordinates local, state, and federal disaster recovery efforts throughout Texas
- Supports law enforcement through crime laboratory and crime records services, and information sharing systems such as the Texas Law Enforcement Telecommunication System
- Administers numerous regulatory programs, including the license to carry a handgun and private security programs

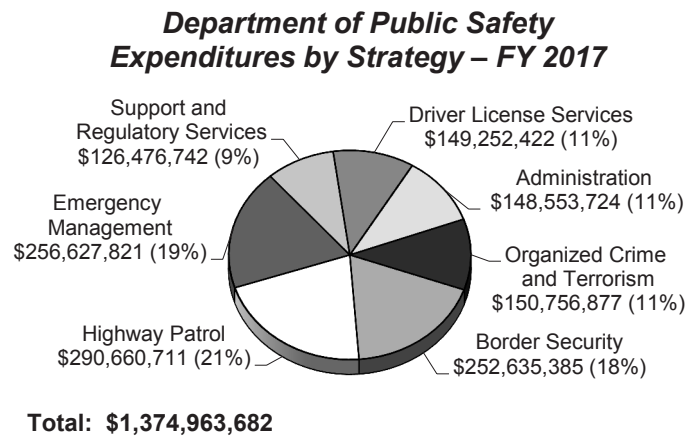
## Key Facts

- **Public Safety Commission.** The Public Safety Commission consists of five governor-appointed members who serve staggered, six-year terms and oversee the department's operations and policies. The governor must consider members' knowledge of and experience in the enforcement of laws, among other qualities, and members must reflect the diverse geographic regions and population of the state.<sup>2</sup> Members must also maintain a security clearance issued by the U.S. government.<sup>3</sup> Two statutorily created advisory committees inform the department regarding metal recycling entities and vehicle inspection matters.<sup>4</sup>
- **Funding.** The department received nearly \$1.4 billion in revenue in fiscal year 2017, including more than \$254 million in federal funds. The pie chart, *Department of Public Safety Sources of Revenue*, provides more detail. In the same year, DPS generated over \$811 million in revenue from various sales and fees, a portion



of which was appropriated back to the department or deposited into the General Revenue and Texas Mobility Funds. Notably, driver license fees totaled almost \$405 million in fiscal year 2017, comprising about 50 percent of DPS' generated revenue.

The department spent about \$1.4 billion in fiscal year 2017, with more than \$290 million going to Highway Patrol and almost \$253 million going to the agency's border security strategy, though other strategies may also include border security spending. The pie chart, *Department of Public Safety Expenditures by Strategy*, shows how the department spent those funds. A description of DPS' use of historically underutilized businesses in purchasing goods and services for fiscal years 2015–2017 is included in Appendix A.



- **Staffing.** The department employed more than 9,800 individuals in fiscal year 2017, including almost 4,200 commissioned employees, as described in the *Commissioned Employees* textbox. The department maintains nearly 500 offices with the majority of staff located outside of headquarters in the state's seven regions. Appendix B compares DPS' workforce to the percentage of minorities in the statewide civilian labor force for the past three fiscal years.

#### **Commissioned Employees**

DPS commissions many of its employees as peace officers who must maintain certification by the Texas Commission on Law Enforcement. Certification requirements include a minimum of 643 hours of initial training and 40 hours of continuing education every two years.

- **Highway safety.** Texas state troopers patrol roadways and enforce traffic and criminal laws throughout the state, primarily along rural highways but with a growing urban presence. Troopers assist stranded motorists and investigate traffic accidents. In fiscal year 2017, DPS issued more than 519,000 citations for speeding, driving while intoxicated, and other violations; investigated more than 68,000 traffic accidents; seized more than 23,200 pounds of marijuana and 930 pounds of cocaine; and rescued 71 children during traffic stops. Troopers also inspect commercial vehicles to determine proper licensure, compliance with weight and size limits, and adherence to requirements for transporting hazardous materials. The department removed more than 66,100 unsafe vehicles and 10,500 unsafe drivers from the roadways for serious safety violations in fiscal year 2017. Troopers also assisted with major initiatives such as Operation Secure Texas at the Texas-Mexico border and operations to help reduce violent crime in urban areas. Further, troopers provided extensive assistance with the state's response to Hurricane Harvey.
- **Organized crime and special investigations.** The department conducts investigations to target criminal organizations in Texas that pose a significant threat to public safety, including Mexican cartels, transnational gangs, sex trafficking, and human smuggling organizations. Through these investigations, DPS made 642 drug trafficking, 99 sex trafficking, 347 gang, and 15 Top Ten Texas Fugitive arrests; and seized significant amounts of marijuana, cocaine, heroin, and methamphetamine, as well as \$15 million in currency in 2017.

- **Major violent crime and public corruption investigations.** The Texas Rangers, a division of DPS, conduct major violent crime investigations including cold cases and officer-involved shootings. They also conduct both public corruption investigations, which involve law enforcement officers engaged in organized crime, and public integrity investigations, which involve crimes committed by public officials. In fiscal year 2017, Texas Rangers made 1,319 arrests and were actively engaged in 1,701 investigations of crimes such as murder, aggravated robbery, sexual assault, and officer-involved shootings. That same year, they investigated 166 public corruption cases and 62 public integrity cases. About 40 Texas Rangers also participate in special operations groups that perform specialized duties, like crime scene investigation and recreation or crisis negotiation.
- **Intelligence and counterterrorism.** The department houses the state-level fusion center in Texas and collects, assesses, and disseminates suspicious activity reports to provide federal, state, and local law enforcement agencies information on suspected criminal or terrorist activities. DPS analysts produce numerous statewide intelligence assessments, including the annual Texas gang threat assessment. DPS is also a member of the Joint Terrorism Task Force and works with local and federal partners across the state to target international and domestic terrorism in Texas.
- **Border security operations.** The department partners with federal, state, and local law enforcement entities to address illicit activity throughout the Texas-Mexico border region, particularly drug and human trafficking and transnational criminal operations. The Legislature appropriated to DPS more than \$694 million in fiscal years 2018–2019 for these efforts. Along the border, six Joint Operations Intelligence Centers serve as staging points for personnel and operations. Analysts at the Border Security Operations Center at DPS headquarters in Austin gather border activity intelligence in real time to inform current and future strategic operations.
- **Driver license services.** The department issues driver licenses, identification certificates, and election identification certificates at its 235 driver license offices across the state and online. In fiscal year 2017, over 23.5 million licenses and certificates were in circulation. The department's call center receives more than 24,000 calls each day from customers regarding documentation necessary for licensure, suspensions or fines, and other related topics. The department also oversees the Driver Responsibility Program, which collected over \$143 million in surcharges in fiscal year 2017, about 50 percent of the total assessed for various traffic offenses, such as driving without insurance or a license.
- **Emergency management.** The department assists local governments in emergency preparation, response, and recovery. In fiscal year 2017, DPS reviewed 2,008 local and regional emergency management plans, held more than 500 training classes, and sponsored nine regional exercises to assess emergency preparedness and response. The department also maintains the federally required statewide emergency management plan and monitors potential and evolving critical situations to coordinate the state's response.

The department receives federal grants to assist local governments prepare for and recover from emergencies and disasters. DPS works with communities to allocate grants based on different infrastructure needs and monitors recipients' use of funds. In fiscal year 2017, DPS administered more than \$116 million in public assistance grants and almost \$60 million in hazard mitigation grants to local governments.<sup>5</sup> In response to Hurricane Harvey, DPS expects to distribute an estimated \$8.6 billion in public assistance grants and \$1.6 billion in hazard mitigation grants to Texas communities.

- **Crime laboratories and crime records.** The department operates 14 crime labs across Texas that provide scientific analysis of DNA, blood- and breath-alcohol concentration, controlled substances, firearms, and other types of evidence for DPS and local law enforcement agencies. In fiscal year

2017, DPS crime labs examined almost 218,000 pieces of evidence, including controlled substances, biological evidence, and firearms. The department also maintains various crime records, such as arrest warrants, missing person reports, and gang affiliation information, in databases accessible to authorized law enforcement personnel through a telecommunications system network. In addition, the department provides state and national fingerprint-based criminal history records to authorized entities and maintains a clearinghouse that provides notice if a person of interest is rearrested in the future. Since 2005, individuals have submitted nearly seven million sets of fingerprints to DPS for these searches.

- **Regulatory services.** In fiscal year 2017, DPS regulated more than 1.4 million entities across 10 programs through more than 60 different licenses and registrations, such as motor vehicle inspector and security guard licenses, and the license to carry a handgun. Commissioned and noncommissioned staff conduct inspections and audits for most programs, and the department takes enforcement actions, including arrests, for violations of statute or DPS rules.
- **Agency administration.** The department handles several unique administrative functions in addition to the human resources, information technology, and financial functions state agencies typically carry out.

Recruitment and training. The department actively recruits individuals to become DPS troopers. Newly recruited trainees are housed at DPS headquarters in Austin during a 24-week training academy that includes courses in tactics, firearms, arrest and control, emergency vehicle operations, and other subjects. In fiscal year 2017, the department graduated 506 troopers from the academy. The department also provides professional development training for staff in management and supervisory positions.

Office of Inspector General. The Legislature created an internal Office of Inspector General at DPS in 2009 to prevent, detect, and investigate breaches of department policy, fraud, abuse of office, and crimes involving employees or property.<sup>6</sup> Depending on the nature of the allegation, the Texas Rangers or the department's equal employment office assist in investigations. In 2017, the Office of Inspector General conducted 157 investigations and oversaw an additional 484 cases.

Fleet operations. In fiscal year 2017, DPS maintained a fleet of 5,103 vehicles. The department operates four full-service automobile repair shops, along with a statewide wrecker service, body repair shop, and law enforcement equipment installation. To improve cost efficiencies, the department regularly refurbishes parts and equipment, reclaiming an average of roughly \$50,000 each month.

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<sup>1</sup> Chapter 181 (S.B. 146), Acts of the 44th Texas Legislature, Regular Session, 1935.

<sup>2</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 411.003(b), Texas Government Code.

<sup>3</sup> Ibid.

<sup>4</sup> Section 1956.017, Texas Occupations Code (Metals Advisory Committee) and Section 548.006, Texas Transportation Code (Motor Vehicle Inspection Advisory Committee).

<sup>5</sup> Local governments use public assistance grants to rebuild damaged infrastructure and hazard mitigation grants to protect existing infrastructure against a future disaster.

<sup>6</sup> Chapter 1146 (H.B. 2730), Acts of the 81st Texas Legislature, Regular Session, 2009.

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# ISSUES





# ISSUE 1

## *DPS Has Not Maximized Its Resources to Adequately Improve Driver License Customer Service.*

### Background

The Department of Public Safety (DPS) program the public interacts with the most, by far, is driver license. The vast majority of adult Texans rely on DPS for issuance of a driver license or identification card. Of the 28.4 million people living in Texas in 2017, 20.3 million held a Texas driver license and another 3.2 million held a state-issued ID. The department spent more than \$149 million on its driver license and identification services in fiscal year 2017 and allocated 2,087 staff to the program. That same year, DPS collected almost \$405 million in various driver license fees.

Managing the demand for driver license services is a major workload for DPS. In fiscal year 2017, DPS issued 3.5 million driver licenses and 603,000 IDs. The department's call center receives about seven million phone calls annually regarding topics such as documents required for licensure, suspension and reinstatement of licenses, and fines. The call center is open from 7 a.m. to 6 p.m. Monday through Friday and has about 84 staff answering calls daily. The department also operates 235 driver license offices across the state, 166 of which have between one to 10 staff. Nine of the offices are "megacenters" that employ at least 25 staff and are designed to process at least 2,000 transactions each day.

Driver licenses now essentially serve as security documents, and DPS staff receive extensive training on the nine-step process to issue new licenses and the eight-step process for renewals. The federal REAL ID Act establishes minimum security standards for state-issued driver licenses and IDs, including the requirement that applicants prove lawful presence in the U.S. Beginning January 2018, travelers who do not have a license or ID from a REAL ID-compliant state, or a state that has been granted an extension, cannot use their license or ID to travel by air. Texas has been REAL ID compliant since October 2016.

### Findings

#### **Driver license customer service continues to struggle at DPS despite dedicated and hardworking staff.**

The department has long had high-profile problems with driver license customer service, such as lengthy wait times at driver license offices and its call center, and the problems have only gotten worse. For example, the 2009 DPS Sunset report noted that customers waited an average of 33 minutes at the Houston-Gessner office; in 2017, the average wait time at that office more than doubled to 71 minutes.<sup>1</sup> (The average wait is likely to be even longer because the office sometimes gets so crowded customers must wait outside the building before being able to check in to the queuing system.) More information about the length of time customers waited to be served can be found in the table on the following page, *Average Wait Times at DPS Driver License Megacenters in Minutes*.

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*Customers wait at the Houston-Gessner driver license office an average of 71 minutes.*

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**Average Wait Times at DPS Driver License  
Megacenters in Minutes\***

<b>Megacenter Location</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
Dallas – South	–	0:59	1:18
Fort Worth	0:51	1:05	1:06
Garland	0:55	0:56	1:29
Houston – Gessner	1:16	1:14	1:11
Houston – North	–	0:24	0:41
Leon Valley	0:26	0:43	1:10
Pflugerville	0:17	0:43	0:43
Rosenberg	0:42	0:45	0:38
Spring	1:01	1:23	0:51

\* Department of Public Safety, *Driver License Improvement Plan Annual Report – 2017*.

The trend in call center performance is not encouraging. In 2009, callers to the DPS call center waited on hold for an average of 13 minutes and 30 seconds, but most callers gave up because the department was able to answer just 35 percent of calls. In 2017, callers waited on hold for an average of 14 minutes and 20 seconds, and DPS answered only 20 percent of the 24,400 daily calls.

Sunset staff also heard numerous complaints about long waits to take a driving skills test at driver license offices, more than three months in some cases. Because DPS does not track this data, the extent of the problem could not be determined.

The department has failed to meet its key driver license performance measure — completing

82 percent of driver license and identification card applications within 45 minutes — since its establishment in 2014. Although DPS meets its targets to mail driver licenses and IDs to customers within two weeks, with 98 percent accuracy, long customer service wait times are a key contributor to customer dissatisfaction.

**Driver License Improvement  
Plan Appropriations**

2012–2013	\$64 million
2014–2015	\$103 million
2016–2017	\$143 million
<b>Total</b>	<b>\$310 million</b>

These long wait times have increased even as the Legislature has invested significant funding in the driver license program. The table, *Driver License Improvement Plan Appropriations*, provides more detail on this substantial investment intended to reduce wait times, build new offices, improve queuing technology, and make other improvements. The department did not receive any additional funds beyond its base appropriation for driver license functions — \$133 million — to improve services for the 2018–2019 biennium.

**Within a law enforcement agency, the driver license program cannot compete with public safety priorities.**

The department appropriately prioritizes preventing and combating crime over more administrative functions like issuing driver licenses. However, DPS still needs to have a strong focus on this critical function that the majority of people in Texas depend on. The lower priority DPS places on its driver license program can be seen in its approach to providing funding and technology to this function.

- **Transferred and unspent funds.** The department has a history of transferring money out of its driver license program to fund other duties. In fiscal years 2012 to 2016, DPS transferred out a net amount of more than \$8 million from its driver license strategies. While this is a relatively small figure compared to the program's overall budget, the reduction still impacts the struggling program. For the 2018–19 biennium, the Legislature “locked”

the driver license goal in DPS' appropriations bill pattern to prevent the department from transferring funds without written permission.<sup>2</sup>

In a 2017 report, the Legislative Budget Board wrote that DPS could not show that all of the funding it received to improve driver license services was actually spent on that purpose.<sup>3</sup> In addition, the driver license program left \$8 million unspent in fiscal year 2017 and returned it to the state to help DPS meet the 4 percent budget cut applied to all state agencies that year. While a small portion of the unused funds stemmed from an unanticipated statewide hiring freeze, the inability to fully apply funds critical to program improvement shows a need for a higher level of management attention, including better planning and prioritization.

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*The driver license program left \$8 million unspent in FY 2017.*

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- **Lack of key technology.** While many state agencies face challenges identifying and procuring information technology, DPS lacks basic technology that could improve customer service. The department's call center does not have customer relationship management software, an important tool to analyze the nature of calls and improve call response. Without this tool, DPS struggles to most effectively target information on its website to address common questions. In addition, DPS' interactive voice response system is not integrated with the Driver License System that holds customers' records, so customers cannot actually make any transactions on their own and instead must still speak with staff or visit an office.

While DPS has installed self-service kiosks in 74 driver license offices across the state, customers can only use them to check in and establish their place in the waiting queue. Many other states successfully use these kiosks for transactions such as renewing licenses, freeing up staff to help customers with more complex transactions. While DPS states that its use of self-serve kiosks in driver license offices cannot currently be expanded because of litigation, the department's approach to this technology was unnecessarily limited from the start.<sup>4</sup>

Finally, while DPS is planning to redesign its entire website, including driver license pages, within the next two years, information is currently very difficult to find. For example, finding documents needed for certain common situations, like replacing a lost driver license or coming from another state with an expired license, is almost impossible. Improvements to relatively simple technology such as a website could go a long way to answering customers' questions, thus avoiding calls and visits to the overloaded call center and offices.

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*Helpful driver license information is difficult to find on DPS' website.*

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### **The department has not implemented plans to close or consolidate driver license offices with low demand.**

DPS and others recognize that smaller driver license offices tend to be less efficient. In 2011, the department partnered with Texas State University to conduct a business intelligence analysis to help inform a plan to more efficiently locate driver license offices across the state.<sup>5</sup> The analysis evaluated offices for

potential closure based on several criteria, including number of transactions, drive time, and population. The analysis identified 26 offices as primary potential closures stating that these resources could be made available to other locations where they could have a positive impact on a greater number of customers.<sup>6</sup> Since this time, six of these offices have closed, not as a proactive measure to better allocate resources, but mostly due to equipment failure and no available replacement. The department has also performed some internal planning to look at closing or consolidating offices and putting resources where they would have the most impact on customer service.

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*The department has 77 one-person driver license offices.*

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In its 2017 *Driver License Improvement Program Annual Report*, the department recognized that without the ability to hire additional staff, an option to increase capacity could be to reallocate employees from offices that serve few customers to offices with more demand.<sup>7</sup> The department currently has 77 one-person offices, almost half of which had fewer than 1,500 transactions in fiscal year 2017 and of those, 20 had fewer than 1,000 transactions.<sup>8</sup> The department has identified these offices as especially problematic because they close any time the assigned customer service representative is sick or on vacation. While some are necessary due to their rural location, others remain merely due to the status quo. Further exacerbating this issue, as DPS has opened new megacenters, it has not always closed nearby smaller offices, often due to local pressure or legislative interest.

### **Most states administer driver license programs through an agency like the Texas Department of Motor Vehicles.**

Just eight states use their public safety department to issue driver licenses; the other forty-two states do so through a department of motor vehicles. Perhaps because most states issue driver licenses through a department of motor vehicles, consumers in Texas frequently expect the same and are confused that the state's public safety agency handles that job.

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*42 states issue driver licenses through a department of motor vehicles.*

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The Legislature established the Texas Department of Motor Vehicles (TxDMV) in 2009 by carving out motor vehicle services and regulation from the Texas Department of Transportation to focus attention on these functions and to improve overall customer service.<sup>9</sup> The Texas Department of Motor Vehicles has a division dedicated to consumer relations and receives high customer satisfaction ratings.<sup>10</sup>

Because TxDMV is also currently under review, Sunset staff carefully considered whether to recommend transferring driver licensing from DPS and identified several efficiencies and benefits to customers from having both driver license and motor vehicle functions in one agency. However, such a complicated transfer of systems would require more expertise and in-depth analysis than Sunset staff could provide. Another issue to consider is that TxDMV operates few service centers since most transactions are processed by the state's 254 tax assessor-collectors. Sunset staff also found in its review of TxDMV opportunities to further consolidate and modernize the agency's customer service and develop a more comprehensive approach to its IT infrastructure. These findings should also be considered in any potential transfer.

## Recommendations

### *Change in Statute*

#### **1.1 Require DPS to develop and implement a plan to close inefficient driver license offices.**

This recommendation would require DPS to develop and implement a plan to better maximize its driver license offices and resources across the state, taking into account geographic distribution. Closing low volume offices would make more resources available for allocation to other offices where they could serve a greater number of customers and best impact customer service. In implementing this recommendation, DPS should consider setting a standard for minimum distance between offices as well as a standard for minimum volume of business to keep an office open unless located in a rural area without reasonable access to other such offices.

### *Management Action*

#### **1.2 Direct the Department of Public Safety and Texas Department of Motor Vehicles to perform a joint analysis on opportunities and challenges of transferring the driver license program to TxDMV.**

This recommendation directs DPS and TxDMV to evaluate the challenges of transferring the driver license program to TxDMV and recommend solutions to ensure a successful transfer should the Legislature choose that option. The agencies should enter into a memorandum of understanding to establish responsibilities of each agency during the analysis and to establish agreed upon milestones and deliverable dates. The agencies should complete the analysis by March 1, 2019, and provide it to the Sunset Commission and the appropriate Senate and House committees. A transfer this complex would require consideration of many factors, including security implications of the REAL ID Act; integration of driver license services with existing TxDMV offices and operations; integration of information technology systems; and estimates of costs and eventual savings. The department could also use information from this analysis to help inform its plan to close inefficient driver license offices.

## Fiscal Implication

Closing inefficient driver license offices would allow DPS to shift resources to help offices with long wait times or address other customer service problems. While no savings to the state would result, this approach could reduce the need for additional driver license funding in the future. The analysis of whether the driver license program could transfer to TxDMV in the future will require planning and cooperation between the two agencies and could be accomplished with current staff and resources. The agencies would also use current resources if outside services are required to evaluate integration of IT systems, for example. Costs of the actual transfer and systems integration would be identified in the joint analysis and forwarded to the Legislature for consideration.

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- <sup>1</sup> Sunset Advisory Commission, *Department of Public Safety Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, July 2009), 9.
  - <sup>2</sup> Rider 52, page V–57, Article V (S.B.1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).
  - <sup>3</sup> Legislative Budget Board, “Improve Transparency and Oversight of the Driver License Improvement Plan,” *Legislative Budget Board Staff Reports*, January 2017, 344.
  - <sup>4</sup> *Stringer v. Pablos*, No. SA-15-CA-257-OG (W. D. Tex. Mar. 30, 2018) (order granting plaintiff’s motion for summary judgment). The plaintiff contends DPS and the Texas Secretary of State are not complying with a requirement of the national Voter Registration Act that citizens be able to register to vote when obtaining or renewing a driver license. The plaintiff asserts that the process for registering to vote is different for in-person and online driver license transactions, leading to widespread confusion for citizens who mistakenly believed they registered to vote online when they renewed their driver license online.
  - <sup>5</sup> Texas State University – San Marcos, *Business Intelligence Analysis Report* (San Marcos: Texas State University – San Marcos, 2011).
  - <sup>6</sup> Ibid.
  - <sup>7</sup> Department of Public Safety, *Driver License Improvement Program Annual Report – FY 2017* (Austin: Department of Public Safety, 2017), 4.
  - <sup>8</sup> In fiscal year 2017, the number of annual transactions per office ranged from 119 in Spearman to 200,934 in Houston–Gessner.
  - <sup>9</sup> House Research Organization, *Bill Analysis for House Bill 3097, 81st Regular Session*, accessed March 24, 2018, <http://www.hro.house.state.tx.us/pdf/ba81R/HB3097.PDF>.
  - <sup>10</sup> Texas Department of Motor Vehicles, *Self-Evaluation Report* (Austin: Texas Department of Motor Vehicles, 2017), 86.



# ISSUE 2

## *DPS Should Better Measure and Report Its Border Security Performance to Allow the State to Determine the Return on Its Significant Investment.*

### Background

The United States Border Patrol, within the Department of Homeland Security's (DHS) U.S. Customs and Border Protection, is the primary federal agency charged with securing the country's borders.<sup>1</sup> Since 2004, Border Patrol has deployed personnel; technology such as cameras and sensors; tactical infrastructure such as fencing, roads, and lighting; and a variety of air and marine assets in a layered approach at the U.S.-Mexico border and even further into the interior of the U.S.<sup>2</sup> While securing the U.S. borders is mainly a federal responsibility, Texas state dollars have flowed to border security efforts to bolster federal programs since at least 2008, two years after Texas had joined Arizona, California, and New Mexico in signing a memorandum of agreement with the federal government to allow National Guard troops to support federal border security.<sup>3</sup>

For its part, the Department of Public Safety (DPS) over the last decade has established the Border Security Operations Center at its Austin headquarters as well as six Joint Operations Intelligence Centers located along the border from El Paso to Edinburg, all the way to Corpus Christi. Beginning in 2008, DPS launched the ongoing Operation Border Star to combine the actions of federal, state, and local law enforcement agencies and private entities in a unified effort along the Texas-Mexico border. Since 2012, DPS has maintained the ongoing mission of Operation Drawbridge, a program involving more than 4,000 motion-detecting cameras placed along the border. In 2013, then-Governor Rick Perry initiated Operation Strong Safety I, a three-week deployment of DPS troopers, Texas military personnel, and other state law enforcement to the Rio Grande Valley to coalesce with local and federal law enforcement in combatting transnational crime in that area. The textbox, *Local, State, and Federal Entities Involved in Border Security*, lists the entities that serve a role in border security in the state.

#### ***Local, State, and Federal Entities Involved in Border Security in Texas***

Local	State	Federal
<ul style="list-style-type: none"> <li>• Municipal police departments</li> <li>• Tribal law enforcement agencies</li> <li>• County sheriffs' offices</li> <li>• Constables' offices</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Public Safety</li> <li>• Texas Military Department</li> <li>• Texas Parks and Wildlife Department</li> <li>• Trusteed Programs Within the Office of the Governor</li> <li>• Texas Department of Criminal Justice</li> <li>• Texas Alcoholic Beverage Commission</li> <li>• Texas Commission on Law Enforcement</li> <li>• Office of the Attorney General</li> <li>• Soil and Water Conservation Board</li> <li>• Texas Department of Motor Vehicles</li> </ul>	<ul style="list-style-type: none"> <li>• Customs and Border Protection</li> <li>• Immigration and Customs Enforcement</li> <li>• Drug Enforcement Agency</li> <li>• Bureau of Alcohol, Tobacco, Firearms and Explosives</li> <li>• Federal Bureau of Investigation</li> <li>• Coast Guard</li> </ul>

In 2014, after a substantial uptick in unaccompanied minors from Central America arriving on the Texas-Mexico border, Governor Perry ordered Operation Strong Safety II, redeploying those state resources. In 2015, the Legislature renamed this response Operation Secure Texas and appropriated unprecedented levels of funding for border security operations, increasing the number of state troopers stationed along the border by 250 and the number of Texas Rangers by 22.

The previous textbox reflects all the state entities that have received state border security funding in the last two biennia, but DPS is the agency to which the Legislature has appropriated the bulk of funds. The Legislature significantly increased its investment in border security for the last two biennia — about \$749.8 million in the 2015 legislative session and about \$694.3 million in the 2017 session. The table, *State Appropriations to DPS for Border Security*, shows the rapid acceleration of border security funding over the past six biennia. In making these appropriations, the Legislature in 2015 defined the geographical area that constitutes the border.<sup>4</sup> The Legislature also confined DPS' use of these funds strictly to border security, defined as activities associated with deterring crimes and enforcing state laws related to multiple categories of criminal offenses, particularly those concerning organized crime and violent crime, between designated entry and exit points along the border.<sup>5</sup>

***State Appropriations to DPS for Border Security***

Biennium	Appropriation to DPS
2008–2009	\$108.2 million
2010–2011	\$102.1 million
2012–2013	\$212.9 million
2014–2015	\$432.7 million
2016–2017	\$749.8 million
2018–2019	\$694.3 million

Since 2015, the Legislature has required DPS, like every state agency appropriated border security funds, to report all budgeted and expended amounts and performance indicator results for border security.<sup>6</sup> The Legislative Budget Board established 44 border security performance indicators that all agencies receiving border security funding must report, including metrics such as the number of multi-agency investigations that led to apprehensions and the number of intelligence reports produced.

## Findings

### **Securing the border is difficult and dangerous work; measuring the success of this work is also very challenging.**

How to secure the border, and the efficacy of federal efforts to do so, have been the subject of intense political debate. What is less disputable is how the federal government has struggled for decades to establish useful metrics for measuring border security success. Since 2001, DHS has changed its border security performance measures six times, and the federal Government Accountability Office has found that until DHS' new border security goals and measures are in place, the extent to which these metrics will inform DHS and Congress of border security results — and provide information on which existing resources and capabilities are adequate — is unknown.<sup>7</sup> Meanwhile, DHS' own Office of Inspector General has found that U.S. Customs and Border Protection does not measure the effectiveness of its programs and operations well, which is why the agency “continues to invest in programs and act without the benefit of the feedback needed to help ensure it uses resources wisely and improves border security.”<sup>8</sup>

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*Since 2001, the U.S. Department of Homeland Security has changed its border security performance measures six times.*

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At the state level, DPS has aligned with state leadership to identify as a top priority in its strategic plan the need to increase security along the Texas-Mexico border.<sup>9</sup> Several factors beyond the control of DPS or any law enforcement entity — such as the weather’s impact on harvests of certain illicit drugs or economic and political circumstances in other countries — affect the level of criminal activity along the border. With this reality in mind, the best chance the state has at assessing the impact of its investment in border security is to examine three categories of information: the amount of resources deployed like the number of troopers, detection cameras, and surveillance hours; trends in outputs, such as the number of apprehensions resulting in cases charged, and multiagency investigations that led to apprehensions; and lastly, whether all of these measures have resulted in less border crime. However, outcomes like lower crime are the most difficult to assign to a specific input like state dollars for border security.

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*Several factors beyond DPS’ control can affect the level of criminal activity along the border.*

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Over the last four years, the Legislature attempted to facilitate measuring and making public DPS’ border security performance by defining the border and border security and establishing border security performance indicators and reporting requirements for these indicators. However, even before substantially increasing DPS’ border security funding, the Legislature has wrestled with the question of how best to measure whether the state’s contributions to the effort to secure the border are succeeding. Lack of consensus in measuring success disproportionately affects DPS, the state’s lead agency for border security, in its efforts to demonstrate the department is doing its job.

As law enforcement and policymakers have learned over time, accounting for deterrence of crime is difficult. The department, consequently, prefers to measure border security in terms of the quantity of resources — personnel, technology, and infrastructure — deployed to cover as much of the border as possible. In addition to operations like patrols, surveillance, and investigations, part of DPS’ execution of its border security mission entails collecting, analyzing, and disseminating intelligence and information on criminal and terrorist activity for both agency use and other law enforcement entities at multiple levels of government. The department produces dossiers on criminal subjects that include various types of information, such as criminal history, warrants, work history, gang affiliations, and other facts. The department in fact has received national recognition as excelling in its role in intelligence, a significant development considering DPS had limited intelligence capabilities when DPS underwent Sunset review a decade ago.<sup>10</sup> However, DPS’ approaches to showing the effectiveness of its border security efforts — number of “boots on the ground” and intelligence — do not provide sufficient information to policymakers and the public about the return on investment for border security funds.

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*DPS prefers to measure border security in terms of quantity of resources deployed.*

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The more than doubling of DPS’ appropriation for border security in 2015 essentially transformed the department’s border security efforts from a component of its larger public safety responsibility to its own distinct mission, and for several years, DPS has made tremendous efforts to fulfill this charge. Starting in 2015, hundreds of DPS personnel made recurring, rotating deployments to the border before the department was able to make permanent assignments. The

department implemented 10-hour workdays and 24-hour border surveillance, coordinating and collaborating with local and federal law enforcement as well as other state agencies, all while continuing to operate as a statewide police force. Like much of the work DPS performs, border security is fraught with danger, as the department faces constantly evolving, sophisticated, and well-funded criminal organizations.

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*DPS appears well positioned to fulfill its charge to secure the border.*

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The Sunset process is intended to evaluate DPS as a state agency, not solely as a law enforcement entity. Legislative oversight agencies generally have a limited history conducting detailed reviews of law enforcement operations, so Sunset cannot, and does not, evaluate how well DPS conducts law enforcement duties. What Sunset staff can say, however, is that given its capabilities, DPS appears well positioned to fulfill its charge to secure the border. What is at issue in this report is not the quality of DPS border security efforts, but rather how DPS measures and reports to the Legislature and the public its border security performance to assess the state's return on its investment.

**Disparate direction has resulted in DPS not providing consistent information to determine the extent of border security and impact of taxpayer funding.**

While the Legislature appropriated border security funding to nine other state entities, because DPS is the lead agency with the lion's share of the funding, capacity, and experience to execute the mission, the department's actions have the most impact on the state's efforts. In other words, if DPS succeeds in securing the border, the state succeeds in securing the border, which lends added urgency to the department's measurement of success. Unfortunately, DPS' and the Legislature's approach to collecting, analyzing, and reporting border security data has made it difficult for the state to assess its return on investment. The department has several shortcomings with its approach. First, DPS lacks the most effective practices for data collection and analysis. The lack of uniformity in legislative requests for border security data, meanwhile, has led to DPS' inconsistent reporting of border security metrics. Further, DPS' inconsistent reporting of crime statistics precludes a more complete analysis of the impact of the department's border security efforts. Finally, opportunities exist to better show impacts on the border areas through reporting of threat levels.

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*DPS lacks the most effective practices for data collection and analysis.*

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- **Data collection and analysis of border security outputs needs improvement.** The department has stated as part of its data collection and reporting plan that it intends to "collect all, assess all."<sup>11</sup> In this plan, DPS has outlined an approach for collecting and reporting all inputs, activities, and outputs; measuring desired outcomes; and assessing the impacts of the department's efforts, such as levels of smuggling and other crime. However, DPS' efforts to carry out this plan lack certain best practices and have fallen short.

Over the last few years, DPS has been collecting dozens of types of border security data, from the number of illegal border crossings and value of heroin

seized to the number of illegal alien detections and criminal enterprise investigations and prosecutions, and the Legislative Budget Board (LBB) adopted several of these as border security performance indicators. During this time, DPS has periodically presented briefings and presentations to the Public Safety Commission, the Legislature, and the public that feature such data. After receiving multiple requests for DPS' border security metrics and after public questioning over the data DPS was providing, the department began to post these reports to its website. Because DPS adjusted the metrics presented in these periodic reports to the individual or group requesting the briefing, the information has been intermittent and does not allow for methodologically sound trend analysis. For example, from September 2014 to July 2015, DPS provided on its website monthly, three-page border security dashboards that included information such as drugs seized and drug-cartel related arrests. After this, the department provided no public border security information for six months until January 2016, when it began posting border security monthly briefs on its website. These 11-page briefs include more information than the dashboards, such as smuggling trends and border corruption, but DPS stopped posting these briefs in June 2017.

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*DPS' border security information has been intermittent and does not allow for methodologically sound analysis.*

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To comprehensively analyze DPS' border security data, Sunset staff worked closely with data analysts at the Texas Legislative Council. Council staff received 609 assessments and reports relating to border security intelligence provided by DPS in addition to the public data referenced above. Council staff found that these strategic documents were not suited for data analysis since they were written and presented for reasons outside of data compilation and contain examples of border security activity that represent only a selective record of events and related measures. About three months after initially asking for border security data, council staff received the underlying data behind the reports but would have needed additional information from DPS to analyze the data in a consistent manner with the differing information in DPS' earlier reports. Council staff also observed data entry issues that are typical within datasets that would suggest these data had not been reviewed for data validation purposes. Observable data entry errors needing to be addressed before analysis could be performed included non-specific number ranges and non-numerical responses to a prompt for an amount. For example, council staff observed an entry for the number of weapons seized that was not a number but rather the make of a weapon. These problems raise questions as to the quantitative techniques used in the collection and analysis of the data.

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*Underlying data behind DPS reports was submitted late and contained errors.*

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Throughout government, from the Food and Drug Administration to the Department of Labor at the federal level to the Comptroller of Public Accounts and the Teacher Retirement System at the state level, policy makers rely on quality data analysis for everything from economic forecasting to assessing healthcare needs, not to mention the heavy use of data analysis in the areas of criminal justice and law enforcement. Without

using best practices to consistently study clean, aggregated data over time, DPS cannot provide the most accurate trend analysis that could be useful for DPS leadership and the Legislature in making strategic decisions on border security.

Another complicating factor in measuring the state's and DPS' impact on border security is that to provide the full border security picture, the department has to collect and report border security data from other law enforcement agencies. In addition, some of the data on law enforcement actions like arrests and drug seizures by other agencies are a result of joint operations conducted with DPS support. While separating DPS results from those of other law enforcement agencies would require additional effort, failing to do so hampers the state's ability to measure whether state border security dollars directed to the department are having an impact.

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*Measuring  
deployed  
resources and  
performance  
outputs only  
captures part  
of the picture.*

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- **DPS does not consistently report border crime statistics to demonstrate the impact of its border security efforts.** Since 2015, the Legislature has directed DPS to not only deter border-related crimes but also to enforce state laws against violent crime and cross-border organized crime. However, DPS has not adopted a clear, consistent approach to measuring and reporting success in meeting this objective, as some border security reports contain crime statistics like arrest data, but most do not. The department's measuring of its deployed resources for deterrence and performance outputs only captures part of the picture, as the extent to which these resources and outputs have had an impact on criminal activity needs to be accounted for as well.

As the state's repository for the Federal Bureau of Investigation's Unified Crime Reporting (UCR) program, DPS collects crime data, including data on crime related to border security, from multiple law enforcement agencies throughout Texas. While UCR, long the standard for reporting levels of crime, is in the process of transitioning to the bureau's National Incident-Based Reporting System (NIBRS), most Texas law enforcement agencies continue to report through the legacy UCR system. National Incident-Based Reporting System data is superior to UCR data because they provide circumstances and context for crimes, including all offenses within a single incident and additional aspects about each event — like location and time of day — while UCR is merely an aggregate monthly tally of crimes. Additionally, UCR does not account for some crimes relevant to the border such as human smuggling or illegal entry.

However, UCR does collect data on the records of calls for service, complaints, and investigations of eight of the most serious and commonly reported crimes, including criminal homicide and aggravated assault.<sup>12</sup> The UCR program collects arrest data for 20 other offenses, such as production and distribution of drugs, weapons, fraud, embezzlement, and others often perpetrated by transnational criminal organizations.<sup>13</sup> As such, the system allows the state to measure the extent, fluctuation, distribution, and nature of crime as well as the total volume of serious crime and the activity and

coverage of law enforcement agencies. The system also enables DPS to use established methods for reporting percent changes in relevant offenses and for comparing statistics on the border to crime in all areas of the state. Reporting crime statistics is not without its weaknesses, as such data do not account for all the unique conditions affecting a local law enforcement entity, some of which are beyond law enforcement's control. Policymakers and the public, therefore, should be cautioned against drawing overly simplistic conclusions.

In 2017, the Legislature required DPS and LBB to jointly assess the impact of any enhanced federal border security efforts and make recommendations to optimally integrate federal and state border security efforts.<sup>14</sup> Without examining impacts to crime, while also taking into account the quantity of resources deployed as well as outputs, neither DPS nor the Legislature can best plan for the state's future investments in border security. Understanding the impact of DPS' border security efforts is also important in the event of significant changes to federal border security efforts that many anticipate, some of which are already in progress, under the current presidential administration.

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*Understanding  
DPS' border  
security impact  
is important  
in the event  
of significant  
changes to  
federal border  
security efforts.*

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- **DPS could make better use of its threat assessment capabilities.** As shown in Appendix C, DPS has established and defined, based on the level of resources in place, four security levels for the border — substantial control, operational control, minimal control, and unsecured. Using the Drug Enforcement Agency's drug seizure data and Border Patrol's illegal entry data, DPS is able to assign each of the 14 counties along the Texas-Mexico border a smuggling "threat level." As part of its promotion of the utility of this type of information on border security, DPS emphasizes the importance of the context that is not captured by isolated data reporting measures. Because to date DPS has only produced one report with an assessment of levels of security, staff were unable to conduct a time-series comparison or trend analysis of the underlying data, which could provide valuable information. While the lack of trend analysis performed on the data used to make these threat assessments is a missed opportunity, DPS deserves credit for being proactive and innovative in developing the capability to assign security and threat levels.

## Recommendations

### *Change in Statute*

#### **2.1 Require DPS to track and publicly provide crime statistics as part of the reporting of its border security performance.**

As discussed previously, border security is difficult to measure. As a partial proxy for outcome measures, DPS should report common, well-defined crime data from the border region. However, users should be aware of the limitations of these data in that border security has an impact on crime reduction throughout



Texas. The Legislature should also be aware that until all of Texas law enforcement has fully transitioned to the FBI's National Incident-Based Reporting System, the state will lack access to the most detailed and high-quality crime data available.

Under this recommendation, DPS would be required to annually report for each month of that year statistics from the department's border regions — Regions 3 and 4 — on border crime as defined in state law. The department would report the best available data on any crime involving transnational criminal activity or that relates to what the department considers border security. For crime statistics not accounted for in the FBI's Unified Crime Reporting or National Incident-Based Reporting formats, DPS may want to collect, track, and report its own data on these crime statistics. To give better context to this information, DPS should also provide comparative statewide crime statistics in the report.

## ***Management Action***

### **2.2 Direct DPS to develop a system for collecting and maintaining output data related to its border security mission.**

Just because obtaining data is difficult, or analysis of the data may be imperfect, are not sufficient causes to avoid the effort altogether. Given its significant investment in border security, the Legislature deserves the best information possible on the return on that investment. This recommendation would require DPS to establish a centralized system for collecting and analyzing border security data. This system should allow for the maintenance of comprehensive, aggregated, clean data. The department should identify which divisions collect and maintain each of the data variables collected. The department should provide a publicly available description for each data variable and develop a consistent range of time in which each variable is collected. These data should be readily available in a format suitable for analysis from inside or outside the department.

The system should also allow DPS to separate its own border security outcomes — like number of apprehensions and interdictions and seizure amounts — from that of other law enforcement entities. In this system, the department would be able to identify and account for instances where DPS provided assistance to other law enforcement agencies and when the department served as the lead agency.

### **2.3 Direct DPS to regularly report to members of the Legislature threat levels along the Texas-Mexico border.**

This recommendation would direct DPS, starting January 1, 2019, to make available to the appropriate committees of the Legislature on a semi-annual basis a confidential report on the security level, as DPS defines it, and the smuggling threat level for each county in DPS Regions 3 and 4. For security purposes, this report may, at the department's discretion, contain depictions of smuggling and threat levels six months behind the current period. Under this recommendation, DPS would be able to continue to draw upon the Drug Enforcement Agency and Border Patrol data used for smuggling threat levels as well the security levels DPS has already defined for substantial control, operational control, minimal control, and unsecured. These reports would provide the most visual evaluative information to the Legislature on the state of border security for a given time.

## Fiscal Implication

These recommendations would create no increased fiscal cost to the state. The department's existing border security appropriation is already expected to cover the costs associated with effectively tracking, analyzing, and reporting its border security data along with crime reporting for the border regions and the state as a whole.

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<sup>1</sup> Government Accountability Office, *Southwest Border Security — Additional Actions Needed to Assess Resource Deployment and Progress* (Washington, D.C.: General Accountability Office, 2016), 1.

<sup>2</sup> Ibid.

<sup>3</sup> The Pew Charitable Trusts, *Immigration Enforcement Along U.S. Borders and at Ports of Entry*, (Washington, D.C.: The Pew Charitable Trusts, 2015), 7.

<sup>4</sup> Article IX, Section 7.11(b) (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Government Accountability Office, *Southwest Border Security — Additional Actions Needed to Assess Resource Deployment and Progress* (Washington, D.C.: General Accountability Office, 2016), 15.

<sup>8</sup> Department of Homeland Security — Office of Inspector General, *CBP's Border Security Efforts — An Analysis of Southwest Border Security Between the Ports of Entry* (Washington, D.C.: Department of Homeland Security — Office of Inspector General, 2017), 2.

<sup>9</sup> Department of Public Safety, *Agency Strategic Plan — Fiscal Years 2017 to 2021*, (Austin: Texas Department of Public Safety, 2017), 6.

<sup>10</sup> Department of Public Safety, "Texas Joint Crime Information Center, Employees Receive National Awards," news release, November 10, 2014, [http://www.dps.texas.gov/director\\_staff/media\\_and\\_communications/2014/pr111014.htm](http://www.dps.texas.gov/director_staff/media_and_communications/2014/pr111014.htm).

<sup>11</sup> Department of Public Safety, *Operation Secure Texas — Texas Border Security Performance Measures* (Austin: Texas Department of Public Safety, 2016), 6, accessed April 1, 2018, <https://www.dps.texas.gov/PublicInformation/documents/borderSecPerfMeasures20160719.pdf>.

<sup>12</sup> Unified Crime Reporting Program — Federal Bureau of Investigation, *Unified Crime Reporting Handbook* (Clarksburg: Federal Bureau of Investigation, 2004), 8.

<sup>13</sup> Ibid.

<sup>14</sup> Article IX, Section 17.13 (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).





# ISSUE 3

## *Overregulation and Unclear Authority Hamper DPS' Private Security Program.*

### Background

In 1969, the Legislature created the Texas Board of Private Detectives, Private Investigators, Private Patrolmen, and Private Guards and Managers as an independent agency to regulate these private security professions.<sup>1</sup> Over time, the Legislature added other professions to the agency's jurisdiction and in 2003, transferred the agency's functions and policymaking body to the Department of Public Safety (DPS).<sup>2</sup>

Today, the state regulates numerous private security companies and individuals who provide these services, as shown in the table, *Private Security Industries*. Owners, managers, shareholders and other entities involved in private security businesses, are also regulated. In fiscal year 2017, DPS provided licensing, inspection, and enforcement for more than 141,000 unique individuals and companies in these private security industries.

***Private Security Industries***

Industries	Individuals	Companies
Alarm Systems	20,735	2,358
Electronic Access Control Devices	1,726	1,392
Guard Dog Trainers	156	68
Locksmiths	1,895	822
Private Investigators	5,556	2,128
Security Guards (armed and unarmed)	107,631	2,438
Telematics*	Not applicable	3
<b>Total**</b>	137,699	9,209

\* Providing remote access of in-vehicle data to facilitate services such as emergency roadside assistance, real-time traffic and navigation information, fleet management, collision notification, or stolen vehicle recovery.

\*\* Individuals may hold registrations in several industries, so these totals for individuals and companies are greater than 141,000.

Seven governor-appointed members representing various private security industries comprise the Private Security Board, detailed in the textbox, *Private Security Board Composition*. The board meets quarterly to discuss concerns from stakeholders, consider and develop rule proposals, and take final action on enforcement issues. The department's Regulatory Services Division performs the day-to-day administration of private security regulation under the authority and guidance of the Public Safety Commission and board.

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

- Three public members
- One private investigator
- One locksmith
- One alarm system company representative
- One guard company owner or operator

The Sunset Advisory Commission was initially created, in part, to review licensing and occupational regulations in state agencies in an effort to stem growing state bureaucracy.<sup>3</sup> In 2013, the Legislature reiterated its direction that Sunset staff carefully consider the extent to which regulatory programs relate to a clear public interest through the least restrictive means of regulation and the effects regulation has on the workforce and consumers.<sup>4</sup> In its review of DPS, Sunset staff considered the practical effects of

having the state's primary law enforcement agency regulate occupations and how regulatory services are prioritized against DPS' law enforcement functions. The findings and recommendations in this issue, along with those in Issues 4 and 5, are intended to clarify the department's responsibilities, reduce unnecessary layers of regulation, and refocus DPS' regulatory efforts on programs with a clear public safety component.

## Findings

### **A separate, quasi-independent Private Security Board creates dueling regulation, inefficiencies, and unnecessary risks for DPS.**

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*Having a separate board impedes efficient regulation of the private security industries.*

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The Private Security Board is not simply an advisory board but has direct authority. Statute does not clearly distinguish authority between the Private Security Board, DPS, and the Public Safety Commission, which prevents department staff from fully integrating the private security program into its other regulatory processes. This arrangement is more akin to an administrative attachment, which has been shown to be an unworkable, ineffective arrangement with other regulatory programs such as in the Department of State Health Services.<sup>5</sup> The Private Security Board directs DPS staff on rules and some enforcement matters, not unlike other independent policymaking bodies. However, the Private Security Board is no longer independent, and DPS staff are under the direction of the DPS director and the Public Safety Commission. As discussed in the following material, Sunset staff found having a separate board impedes efficient regulation of the private security industries; blurs transparency and accountability to licensees and the public; and creates inadvertent risks for the department.

- **Convoluting, inefficient policymaking processes.** Rulemaking authority is unnecessarily split between two policymaking bodies, preventing the department from being able to effectively administer the private security regulatory program. Despite being transferred to DPS 15 years ago, much of the Private Security Board's statutory authority has remained unchanged, with a resulting split between the Private Security Board, Public Safety Commission, and department.

For example, DPS staff and board members develop proposed rules using feedback from licensees, stakeholders, and internal reviews, which is a fairly standard practice among regulatory agencies. However, the Private Security Board has additional, atypical statutory requirements for rulemaking meant to facilitate interaction between the board and DPS.<sup>6</sup> The board must consult with the department's general counsel, director, and chief accountant and the rule must be approved by the Public Safety Commission before it can be finally adopted.<sup>7</sup> This cumbersome process can take up to nine months. However, the Public Safety Commission also has authority to propose and adopt rules independent of the Private Security Board's process and has used this authority in the past when the board has not acted in the interest of public safety, as explained in the textbox on the following page, *Competing Rulemaking Authority*.

### ***Competing Rulemaking Authority***

Board rules previously allowed an individual to work in a regulated position for up to 14 days before applying for a registration. The 14 days were reduced to five in 2009, but in 2013, department staff approached the Private Security Board to eliminate this exception, citing concerns that individuals could avoid regulation altogether by taking temporary positions only, which are common in some private security industries. The industry-dominated board refused to propose a repeal of the “five-day rule,” so the Public Safety Commission proposed and adopted the repeal independently. In response to negative comments about the commission’s intervention in the typical private security rulemaking process, the Public Safety Commission noted in its final approval of the repeal that the commission has a duty to address rules that are inconsistent with statute, public safety, and public policy.

As previous Sunset reviews and private consultants have often pointed out, boards acting with autonomy but existing within the structure of larger agencies are operationally and organizationally ineffective.<sup>8</sup> The unclear authority between the Public Safety Commission and board places an administrative burden on staff to navigate between two bosses: direction from the Private Security Board versus the policies set by the department and the commission. Additionally, waiting for the Private Security Board to convene at a quarterly meeting, then proceeding through the lengthy rulemaking process, unnecessarily elongates decision making for the department.

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*Unclear authority places an administrative burden on staff to navigate between two bosses.*

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- **Unusual and risky enforcement authority.** The Private Security Board also exercises a questionable level of independence with its enforcement authority, creating potential, unnecessary risks for DPS and the Public Safety Commission. Typically, the policymaking body responsible for regulation or its executive director makes final determinations of enforcement actions, since they are ultimately accountable for the execution of laws and rules within their jurisdiction. However, the Private Security Board — not the Public Safety Commission — currently takes all final enforcement actions against private security licensees, which has exposed the department to litigation and public scrutiny.

For example, in open meetings held during fiscal year 2017, the Private Security Board heard arguments and made final decisions for 24 enforcement cases, primarily involving denied licenses and registrations based on past criminal history. Private Security Board members exercised considerable discretion in questioning the evidence and respondents, and took action contrary to the administrative law judge’s findings and conclusions. However, any resulting appeal or other legal action in response to enforcement actions would be taken against DPS, not the Private Security Board. This split authority diminishes Private Security Board members’ accountability for their actions and places liability on the Public Safety Commission. Currently, two cases against DSP are pending in Travis County district courts for issues arising from the private security program.<sup>9</sup>

**Overregulation of the private security industry does not protect the public, wastes limited state resources, and creates bureaucratic barriers to doing business in Texas.**

As part of its review of DPS' regulatory functions, Sunset staff found the current approach to regulating the private security industry delves too deep into purely business affairs without a clear nexus to public safety. DPS currently regulates individuals and entities that, while working within the private security industry, do not provide private security services directly and have minimal, if any, relation to public safety. Further, past attempts to streamline and simplify regulation instead morphed into a complex patchwork of endorsements, registrations, and licenses that has proven difficult for the department to manage and for licensees to navigate.

- **Excessive and unnecessary layers of regulation.** While some members of the industry clearly need to be regulated, Sunset staff considered whether regulation of so many aspects of the private security industry is still necessary. DPS individually regulates the owners, partners, shareholders, corporate officers, managers, supervisors, and branch offices that all operate under the same private security company license. The table, *Layers of Regulation*, provides an overview of the myriad of different regulated jobs involved in the private security industry and the related number of registrations or licenses issued.
  - Statute requires every licensed private security and private investigations company to operate under the direction and control of a manager

***Layers of Regulation – FY 2017***

<b>Regulatory Category</b>	<b>Licenses or Registrations*</b>
Company	9,209
Branch Office	509
Governmental Subdivision	36
Private Security Department	188
Owner	2,595
Partner	425
Shareholder	4,106
Corporate Officer	4,769
Manager	6,938
Supervisor	66
Employees (voluntary)	1,651
Private Security Providers	342,945
<b>Total</b>	<b>373,437</b>

\* Individuals may hold multiple registrations.

who meets certain qualifications, or to employ supervisors who meet those qualifications.<sup>10</sup> Statute also conditions company licensure on either the owner or manager having significant experience in the security industry.<sup>11</sup> Certain private security business owners, officers, partners, and shareholders are also required to register separately with the department, and individuals performing duties not regulated by the department may voluntarily register.<sup>12</sup> Finally, statute provides for licensure of governmental subdivisions, like school districts, and private businesses with internal security departments under certain circumstances.<sup>13</sup>

These individuals do not practice the regulated profession and have minimal if any, day-to-day impact on the public and consumers. However, all of these non-service providers are subject to criminal history background checks, application and renewal requirements, and associated fees that may discourage or preclude participation in the industry. In addition, DPS must perform all the administrative duties necessary to regulate these

individuals. While many regulatory programs include companies and individuals, registration of so many tangential entities not directly involved in providing services to the public creates an impediment to private business practices with minimal public benefit.

- Private security salespersons and consultants do not provide direct security services. Rather, licensed private security and alarm systems companies hire these individuals to sell the companies' products and services. The table, *Private Security Salespersons and Consultants*, shows the number of individuals engaged in selling or consulting about alarm systems or security services. While these individuals may contact the public in the scope of their employment, resources like the Better Business Bureau and online business review forums provide information for consumers to judge the legitimacy of business offers. Further, the consumer protection division of the attorney general's office offers an avenue for reporting fraudulent or possible criminal activity.

***Private Security Salespersons and Consultants***

Industry	Individuals	Companies
Alarm System Salesperson	6,785	Not applicable
Security Salesperson	1,031	Not applicable
Security Consultant	286	489
<b>Total</b>	<b>8,102</b>	<b>489</b>

- Typically, requirements for regulation should be related to the practice of the profession and should not create a burden for applicants or licensees unless there is a clear connection between the requirement and protecting the public. To perform any regulated activities under the Private Security Act, an individual must register with the department and be employed by a licensed company.<sup>14</sup> Certainly, some violations of statute or rule would implicate an individual and a company, such as a company hiring a security guard to conduct work they are not licensed to perform. In those situations, the department should be able to enforce laws and rules against both the security guard and the company. However, requiring an individual to be affiliated with a company does not improve the quality of the services provided or give the public an additional avenue for resolving potential complaints. Affiliation with a licensed company is a barrier to performing private security services that does not clearly provide a public safety benefit.
- **Inefficient endorsement system.** The 2009 Sunset review of DPS included a recommendation to incorporate an endorsement system to streamline regulatory processes. The endorsement process should have allowed an individual to hold a single license and add endorsements to show competency to perform multiple regulated jobs, such as installing and monitoring alarms or providing services as a locksmith and a security guard. However, the results of implementing this recommendation have not achieved intended efficiencies — individuals must still apply for each endorsement as if it were a separate registration, rather than simply proving competencies to add to an existing license. The textbox on the following page, *Degrees of Regulation*, explains the differences between registrations, licensure, and endorsement.

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*Requiring an individual to also be affiliated with a company does not improve quality of services.*

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### **Degrees of Regulation**

**Registration:** typically considered the lowest level of regulation. The regulating agency essentially maintains a roster and may set minimum requirements for individuals to be added to the list.

**Endorsement:** a permit entitling a registered individual to perform a regulated service.

**Licensure:** the most stringent form of regulation. Specific education and experience standards are typically required to be licensed, and the practice, as well as the title of an occupation, is subject to regulation.

In practice, DPS treats registrations equally with licenses, subject to the same background checks and rules. Because a single individual may have multiple registrations, often in different private security industries, the department has difficulty reliably reporting the number of unique individuals associated with each regulated profession. Between piecemeal statutes — much of which originated with initial regulation of the industry in 1969 — and the department's internal practices, DPS operates with a jumbled, ineffective system of registration, endorsement, and licensure. Simplifying the regulatory structure of the private security

industries would better focus the department's resources on individuals and companies actually involved in providing private security services at the level of regulation befitting those individuals that impact public safety.

### **Regulating guard dog companies and trainers and telematics companies is unnecessary to protect consumers and the public.**

Although an argument could be made about the risks inherent in any private security occupation currently regulated by DPS, state regulation of guard dog trainers and telematics providers does not make a significant impact to public safety. Although DPS can only provide limited data, little meaningful enforcement activity is taken against these entities, and most complaints involve unlicensed activity. Also, other laws and plentiful access to consumer information provide better means of protecting the public interest associated with these programs.

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*Other laws and plentiful consumer information provide better means of protecting the public.*

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- **Guard dog companies and trainers.** The department regulates 156 individuals and 68 companies that train dogs to provide security services or conduct investigations.<sup>15</sup> Other than typical business requirements like record-keeping, most substantive regulation consists of animal welfare requirements, like providing water and vaccinations, or ensuring fencing is secure. DPS reports that in most complaints the client was unaware that a trainer was required to be registered, and existing criminal penalties for animal cruelty provide the needed assurances that minimum standards for animal welfare are complied with.<sup>16</sup> Also, neither the individuals who purchase and use the dog nor the animal itself are regulated by the state, which undermines alleged public safety concerns of regulating trainers. Further, access to business information from the Better Business Bureau and online sources is available to individuals who might procure guard dog services, and numerous private certification options exist for dogs and handlers in canine-protection or investigative services.
- **Telematics companies.** Three companies licensed as telematics service providers with DPS in fiscal year 2017. Telematics companies provide remote, in-vehicle data to facilitate services such as emergency roadside

assistance, collision notification, or stolen vehicle recovery.<sup>17</sup> These services are provided to service subscribers, and information about these companies is readily available through publicly accessible means. Statute requires telematics companies to meet certain international minimum standards and pay an annual \$2,500 fee to the department.<sup>18</sup> The department takes no meaningful enforcement action against these companies. In fiscal year 2017, DPS reported one complaint regarding a telematics company that did not pay the fee. This regulation of telematics companies does not promote a public interest.

## Recommendations

### *Change in Statute*

#### **3.1 Reconstitute the Private Security Board as an advisory committee.**

This recommendation would remove the inefficiencies and risks associated with the semi-autonomous Private Security Board and establish instead a private security advisory committee to advise DPS and the Public Safety Commission on matters related to regulating private security industries. The Private Security Board would expire on September 1, 2019, and the Public Safety Commission would appoint advisory committee members who represent the regulated private security industries and consumers. Statute would authorize the commission to delegate this responsibility to the director. Current Private Security Board members would be eligible for appointment to the new advisory committee. Under this recommendation, statute would provide for at least quarterly meetings to ensure ongoing opportunities for public and stakeholder participation.

This recommendation would also clarify in statute that all regulatory authority for the private security program, including rulemaking and enforcement authority, exists solely with the Public Safety Commission or DPS, as is the case with DPS' two advisory committees for other regulatory programs.

#### **3.2 Deregulate 10 registrations for individuals and entities that do not directly provide private security services.**

This recommendation would eliminate the unnecessary layers of regulation for individuals that do not directly provide private security services, including owners, partners, shareholders, corporate officers, managers, and supervisors, and branch offices that operate under the same company license. This recommendation would also end the voluntary registration of employees who do not engage in regulated activities. Additionally, under this recommendation, governmental subdivisions and private businesses with internal security departments would no longer register with the department, although security guards working for these entities would continue to be regulated.

This recommendation would also remove the requirement for businesses to operate under the direction of a manager or supervisors that must have additional experience requirements. Instead, like other industries, company owners would apply for licenses on behalf of the company, but the department would not separately register and regulate owners apart from that company license.<sup>19</sup> This recommendation would also remove the jurisprudence examination requirement from statute, because, although DPS has authority to examine all regulated entities, only managers are currently required to take the exam. These changes would focus regulatory efforts on individuals who actually provide private security services and the companies responsible for ensuring the safe execution of those services.



### **3.3 Discontinue regulation of private security salespersons and consultants.**

This recommendation would discontinue regulation of security and alarm systems salespersons and private security consultants on September 1, 2019. These individuals do not directly provide security services or threaten public safety, and alternative means exist for the state to address reported fraudulent or criminal activity.

### **3.4 Remove requirements for regulated individuals to be affiliated with companies.**

This recommendation would eliminate the requirement for individuals who engage in private security services to be affiliated with licensed companies. Companies providing regulated security services would still obtain a license, as would individuals who engage in those professions, but, under this recommendation, affiliation with a company would no longer be a prerequisite to licensure or employment opportunities.

### **3.5 Require individuals who provide private security services to obtain a license, rather than a registration or endorsement.**

This recommendation would simplify regulation and improve administrative oversight by requiring individuals who engage in regulated activities to obtain a separate license, rather than a registration or an endorsement, for each activity. Sunset's past recommendation to implement an endorsement system was predicated on individuals' affiliation with companies and lower regulatory oversight of registrants. While this change will result in some individuals having multiple licenses, contrary to the intent of past Sunset recommendations, the department's endorsement system has proven unworkable and results in poor oversight of the program. Additionally, requiring all individuals and companies to obtain a license would continue DPS' appropriately high level of regulation for entities engaged in private security occupations.

### **3.6 Discontinue regulation of guard dog companies and trainers.**

This recommendation would deregulate guard dog companies and trainers. Existing criminal laws provide sufficient means to ensure animals are treated humanely, and private certification opportunities offer trainers a way of demonstrating their qualifications to the public. Regulation of these entities would cease on September 1, 2019.

### **3.7 Discontinue state regulation of telematics companies.**

This recommendation would deregulate telematics service providers under the Private Security Act by removing payment of an annual fee. The minimal regulatory functions related to these activities would cease on September 1, 2019.

## **Fiscal Implication**

Deregulation, and the resultant elimination of regulatory fees, causes a loss of revenue to state funds. In this case, these recommendations would result in a total negative fiscal impact to the state of about \$528,000 each year. These recommendations would result in a savings of almost \$378,000 in regulatory expenses and \$6,100 in travel reimbursements from reconstituting the Private Security Board as an advisory committee, and removing tangential business licenses and deregulating several professions would also eliminate revenue associated with those licenses. Recommendations with a fiscal impact are explained further below.

Recommendation 3.2 would eliminate roughly 21,500 tangential business licenses from the private security program and about \$541,000 in lost revenue for the state, but would save about \$226,000 in administrative costs.

Recommendations 3.3, 3.6, and 3.7 would discontinue almost 14,500 licenses, resulting in over \$363,000 lost revenue. However, costs to regulate these individuals and professions — an estimated \$152,000 — would decrease as a result of streamlined administration and would offset some revenue losses.

***Department of Public Safety***

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Loss to the General Revenue Fund</b>	<b>Net Loss to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$384,000	\$912,000	\$528,000	-7
2021	\$384,000	\$912,000	\$528,000	-7
2022	\$384,000	\$912,000	\$528,000	-7
2023	\$384,000	\$912,000	\$528,000	-7
2024	\$384,000	\$912,000	\$528,000	-7

- .....
- <sup>1</sup> Chapter 610 (S.B. 164), Acts of the 61st Texas Legislature, Regular Session, 1969.
  - <sup>2</sup> Chapter 10 (H.B. 28), Acts of the 78th Texas Legislature, 3rd Called Session, 2003.
  - <sup>3</sup> House Committee on State Affairs, *Bill Analysis for C.S.B. 54*, (Austin 1977); Chapter 735 (S.B. 54), Acts of the 65th Texas Legislature, Regular Session, 1977.
  - <sup>4</sup> Chapter 222 (H.B. 86), Acts of the 83rd Texas Legislature, Regular Session, 2013. All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.0115, Texas Government Code.
  - <sup>5</sup> Sunset Advisory Commission, *Staff Report for Texas State Board of Examiners of Marriage and Family Therapists, Texas State Board of Examiners of Professional Counselors, and Texas State Board of Social Worker Examiners*, (Austin 2017), available at <https://www.sunset.texas.gov/reviews-and-reports/agencies/texas-state-board-examiners-professional-counselors>.
  - <sup>6</sup> Senate Research Center, *Bill Analysis for C.S.H.B. 2303*, (Austin 2005); Chapter 1278 (H.B. 2303), Acts of the 79th Texas Legislature, Regular Session, 2005.
  - <sup>7</sup> Section 1702.0611, Texas Occupations Code.
  - <sup>8</sup> Elton Bomer, *Texas Department of Health – Business Practices Evaluation* (Austin: Texas Department of Health, 2001), 63.
  - <sup>9</sup> *Guerrero v. DPS*, No. D-1-GN-15-001740 (53rd Dist. Ct., Travis County, Tex. May 5, 2015) and *Luster v. DPS*, No. D-1-GN-16-005638 (250th Dist. Ct., Travis County, Tex. Nov. 17, 2016).
  - <sup>10</sup> Section 1702.119, Texas Occupations Code.
  - <sup>11</sup> Sections 1702.114–.115, Texas Occupations Code.
  - <sup>12</sup> Section 1702.221(b), Texas Occupations Code.
  - <sup>13</sup> Section 1702.181, Texas Government Code.
  - <sup>14</sup> Section 1702.221, Texas Occupations Code.
  - <sup>15</sup> Section 1702.109, Texas Occupations Code.
  - <sup>16</sup> Section 1702.116, Texas Occupations Code; Section 42.092, Texas Penal Code; 37 T.A.C. Section 35.11.
  - <sup>17</sup> Section 42.092, Texas Penal Code.
  - <sup>18</sup> Section 1702.332(c), Texas Occupations Code.
  - <sup>19</sup> For example, under Section 1601.303, Texas Occupations Code, an owner of a barbershop may apply for a permit to run that company regardless of that owner's experience in barbering. If that individual also wants to provide services as a barber, then they must hold the appropriate certification.

# ISSUE 4

## *The Department's Nonstandard Regulatory Processes Compromise Effective and Fair Operations.*

### Background

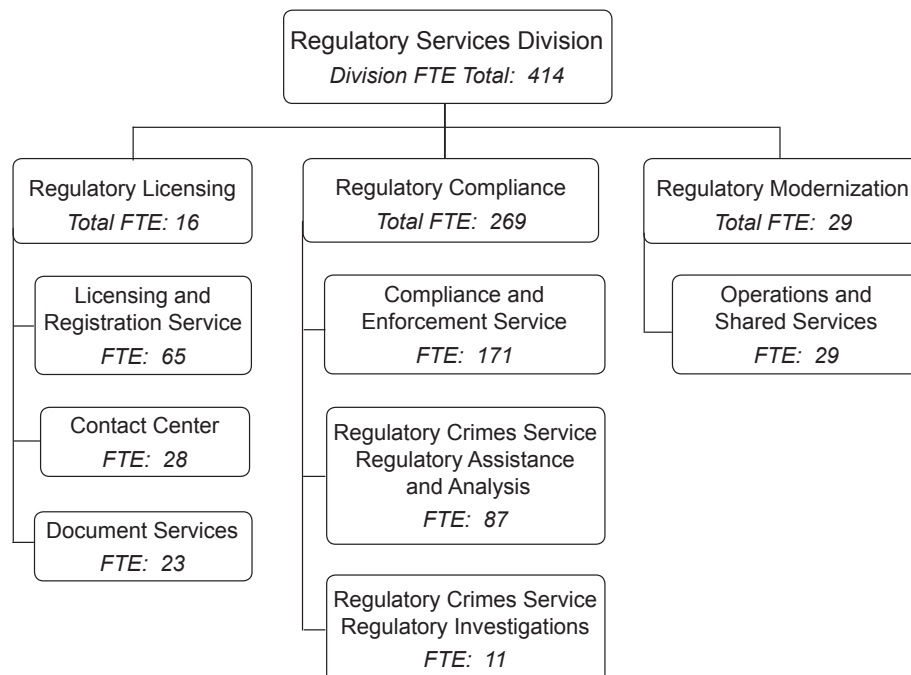
The Department of Public Safety (DPS) oversees the administration of 10 unique regulatory programs through its Regulatory Services Division (RSD). Some programs have historical roots in the department and relate to other DPS activities, like the vehicle inspection program that initially grew from the department's highway safety functions. Other programs are more recent additions to RSD and have less connection to the department's law enforcement responsibilities. The textbox, *Timeline of Regulatory Programs*, shows when the Legislature added each of the programs to DPS. Appendix D provides more detail for each of these programs.

With a fiscal year 2017 budget of about \$24 million — roughly 3 percent of the department's appropriations — RSD manages the day-to-day administration of the programs for more than 1.4 million regulated entities. The chart, *RSD Organizational Chart*, shows how RSD aligns its staff with licensing, compliance, enforcement, and administrative services.

#### ***Timeline of Regulatory Programs***

1952 – Vehicle Inspection  
 1973 – Peyote Distributors  
 1989 – Precursor Chemicals and Laboratory Apparatuses  
 1995 – License to Carry a Handgun and Emission Repair Facilities  
 1999 – Ignition Interlock Device Vendors  
 2003 – Private Security  
 2007 – Metal Recycling Entities  
 2011 – Capitol Access Pass  
 2015 – Compassionate Use Program

#### ***RSD Organizational Chart***



The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, asking not only if the functions of an agency continue to be needed, but also whether the agency is performing those functions in the most efficient, fair, and effective manner. Over the course of more than 40 years, Sunset has documented standards to guide reviews of agencies and continues to refine and develop these standards to reflect additional experience and changing circumstances. This issue, as with Issues 3 and 5, reflects the application of these standards to help refocus the department's regulatory efforts to provide fairer and more effective oversight of these occupations and industries.

## Findings

### **DPS' regulatory functions are not effectively administered.**

Administration of regulatory programs at DPS reflects a law enforcement mentality better suited for anti-crime measures than regulatory functions. Priority in the department is of course given to major public safety initiatives like border security and highway patrol. As DPS has acquired regulatory programs over time, new statutes have not been aligned with the department's existing framework, resulting in conflicting statutory authority. However, even accounting for factors beyond the department's control, DPS has not fully embraced its responsibility to oversee these regulatory programs and struggles to harmonize needed administrative processes with its larger law enforcement operations.

- **Misplaced focus on criminal aspects of regulatory programs.** The department over-emphasizes the criminal aspects of its regulatory programs, putting resources towards achieving outcomes similar to its other law enforcement functions without sufficiently focusing on important administrative aspects of the programs. While agencies should monitor both criminal and administrative outcomes of their investigations, knowing the trends in specific violations and consistency of enforcement actions is important to properly managing regulatory programs. Other department actions similarly reflect a strong law enforcement mentality in regulation. For example, DPS generally does not apply mitigating and aggravating factors to criminal history evaluations at the staff level and instead relies on rules that create cut-and-dry standards for disqualification, discussed below in further detail. Overall, DPS' criminal focus, in lieu of attention to regulatory performance, demonstrates the department lacks a balanced approach to overseeing the regulation of professions, industries, and activities under its jurisdiction.

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*DPS struggles to harmonize needed administrative processes with its law enforcement operations.*

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In contrast, the Texas Department of Licensing and Regulation (TDLR) uses a proven, standardized method to regulate occupational and small industry programs. The Legislature has repeatedly recognized TDLR's competency in administering regulatory programs, transferring 23 programs with more than 417,000 licensees to TDLR since 2001. Using its experience receiving and adapting programs, TDLR uses a straightforward approach to identifying broken or inefficient practices and rules, engaging stakeholders, and ultimately developing clear processes that are effective to administer, ensure fairness for licensees, and achieve the goals of regulatory programs.

As DPS has been tasked with administering regulatory programs, both it and the state would benefit from using TDLR's expertise in refocusing the department's rules, procedures, and processes used by the regulatory services division.

- **Weak data practices prevent DPS from effectively managing regulatory programs.** The department has not leveraged technology to manage its regulatory programs, reducing the effectiveness and transparency of DPS' regulatory operations. The regulatory services division relies on an unmanageable patchwork of databases to track licensing, audits and inspections, and enforcement activity, ranging in sophistication from unique, customized applications to simple spreadsheets. All of these databases lack interoperability, so staff must look in multiple applications to get the entire picture of an individual's regulatory history. As an example of the dysfunction this poor data management has caused, over the course of the Sunset review, RSD has provided varying counts of the number of complaints received for each program, shown in the table,

***Differing Complaint Data Reported to Sunset  
FY 2017***

<b>Program*</b>	<b>First Report</b>	<b>Second Report</b>	<b>Third Report</b>
License to Carry Handgun	48	40	48
Metal Recycling Entities	17	15	13
Private Security	710	490	671
Salvage Yards	58	32	55
Vehicle Inspection	Not available	436	397
<b>Total</b>	<b>833</b>	<b>1,013</b>	<b>1,184</b>

\* Only programs for which DPS received a complaint are shown.

*Differing Complaint Data Reported to Sunset.* The department has recognized the problem with its data management in RSD, but as explained in the textbox, *Insufficient Solution for Databases*, DPS' proposed solution still reflects a desire for regulatory services to fit in to the department's law enforcement operations.

### ***Insufficient Solution for Databases***

Recently, DPS has begun shifting its law enforcement functions to a new case management platform, called the State Police Unified Reporting System (SPURS), to improve coordination and de-confliction of criminal investigations. The department intends to use a modified version of SPURS, called Phase II, to consolidate RSD's investigatory and enforcement data for both criminal and administrative cases in the hopes of gaining similar efficiencies.

However, even as DPS has begun testing Phase II, staff has identified limitations with the platform, such as difficulties customizing fields for detailed report production. SPURS was never designed to accommodate the needs of regulatory services in maintaining investigative and enforcement data, particularly for administrative cases, nor will Phase II improve interoperability with licensing and other RSD databases.

- **Poor information tracking.** The department does not reliably track data necessary to properly manage its regulatory operations. Agencies should be able to compile detailed statistics about complaints received and investigated and enforcement actions taken against licensees to regularly assess and improve the effectiveness of their operations. Analysis of thorough, reliable

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*Regulatory data gaps prevent effective management.*

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data would enable DPS to diagnose problems with processes, highlight trends in regulatory activity, and identify more strategic use of its resources. While some of the department's databases understandably only collect limited data, RSD does not track comprehensive but basic regulatory information needed to inform management decisions. For example, no single database tracks complaints received by RSD through the entire investigation and eventual closure process. The case intake database contains information about complaints referred to the Criminal Investigations Division (CID), which assists in regulatory investigations, but this database does not contain detailed information about the resulting investigations or final actions taken to close cases. Another database tracks investigations conducted by CID. As shown in the table, *Information Disparities Between Databases*, these databases show vastly different caseloads, so RSD seems to lose track of almost 500 cases referred to CID but perhaps not yet investigated. These gaps in information prevent the department from effectively overseeing and managing its regulatory programs.

***Information Disparities Between Databases – FY 2017***

<b>Program</b>	<b>Cases Referred to CID (RSD Case Intake Database)</b>	<b>Investigations by CID (CID Investigations Database)</b>
License to Carry a Handgun	37	0
Metal Recycling Entities	12	67
Private Security	414	225
Vehicle Inspection	384	86
<b>Total</b>	<b>847</b>	<b>378</b>

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*More publicly available regulatory information would improve accountability and transparency.*

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- **Limited publicly reported information.** Because DPS does not adequately track data, it cannot analyze its work internally or provide aggregate information about its operations to the public. Certain basic licensing and enforcement information should be readily accessible to policymakers, DPS staff, and the public to provide greater awareness of the department's activities and maintain accountability for performance. Some data is reported as performance measures used to justify agency expenditures in annual fiscal reports. Some additional information is publicly available on DPS' website, such as the total number of applications processed each quarter for the private security program. However, other information, like the number of licenses probated, suspended, and revoked for each program, is not available, and as a whole, the lack of publicly available information significantly reduces the transparency of DPS' regulatory operations.



## Nonstandard licensure requirements create unfair barriers to licensure and prevent the department from effectively regulating programs.

Several licensure requirements create unfair burdens for licensees and do not reflect common practices in occupational and regulatory programs. Although the department must contend with a wide variety of statutes for programs that do not align with one another or other law, DPS' own rules and policies have not adequately reconciled these differences and, in some cases, have ignored legislative direction to reduce confusion and burdens to licensees and the public. Requirements for licensure in particular should be clear and directly relevant to the occupation or industry being regulated. Unreasonable requirements on licensees can create significant burdens on the workforce, and nonstandard practices unnecessarily reduce efficient program administration.

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*Licensure requirements should be clear, reasonable, and related to the occupation.*

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- **Inappropriate criminal history evaluations.** The department's overly criminalistic approach to evaluating past criminal history does not follow standards contained in Chapter 53, Texas Occupations Code. An agency should have clear guidelines identifying which crimes directly relate to an occupation and the mitigating and aggravating factors the agency considers in evaluating convictions.<sup>1</sup> These requirements typically prevent an agency from limiting entry into a profession or occupation unless there is a compelling public safety reason to deny or revoke licensure. Department rules generally identify crimes related to the various regulated professions and occupations, but Sunset staff found several areas of concern where DPS' practices, rules, or statute were inconsistent with legislative expectations and guidance:
  - Staff does not apply mitigating and aggravating factors in assessing whether a criminal conviction should preclude licensure.
  - Misdemeanor convictions related and unrelated to the regulated occupation are treated equally in the private security program.
  - Rules identify permanently disqualifying convictions for the private security and vehicle inspection programs.
  - The standard to determine when a conviction may be considered in criminal history evaluations for the private security, vehicle inspection, and metal recycling entity programs do not align with Chapter 53, Texas Occupations Code.

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*DPS has pursued questionable actions for past criminal history.*

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The department in particular has had problems evaluating mitigating and aggravating factors to criminal history for applicants and licensees of the private security program. As described in Issue 3, having a separate, independent Private Security Board, has contributed to inconsistent rules, but DPS is ultimately responsible for pursuing unwarranted action against licensees, explained further in the textbox on the following page, *Examples of Questionable Enforcement Action for Criminal Convictions*.

### ***Examples of Questionable Enforcement Action for Criminal Convictions***

In 2017, DPS denied an application to renew a registration, held since 1998, based on convictions that rules identified as relating to the private security industry, even though the individual had no other criminal or disciplinary history. The proposal for decision submitted by SOAH pointed out DPS staff were not considering mitigating and aggravating factors, contrary to both Chapter 53, Texas Occupations Code, and DPS' own rules.

DPS denied another application the same year for an unrelated misdemeanor conviction. Both individuals' registrations were ultimately approved by the Private Security Board after almost a year of litigating these cases. Far from being isolated incidents, DPS denied more than 1,400 private security applications for criminal history violations in fiscal year 2017.

- **Subjective character requirements.** Statute requires applicants for security guard commissions — essentially permission to carry a firearm in an employee capacity — to demonstrate “good moral character,” which usually involves reviewing an applicant’s criminal history. While Texas wants its security personnel to be of good moral character, this is a subjective standard for licensing and cannot be applied consistently. The department does not separately evaluate applicants’ moral character and is already subject to following Chapter 53, Texas Occupations Code, for reviewing private security applicants, which provides more appropriate and objective standards to guide criminal history evaluations.

#### ***Background-Check Authority***

DPS has authority to conduct federal and state fingerprint-based background checks for the following programs:

- Capitol Access Pass
- License to Carry a Handgun
- Private Security

DPS has authority to conduct fingerprint-based background checks for Texas offenses only for the following program:

- Compassionate Use

DPS has no authority to conduct fingerprint-based background checks for the following programs:

- Ignition Interlock Device Vendors
- Metal Recycling Entities
- Peyote Distributors
- Precursor Chemical and Laboratory Apparatus
- Vehicle Inspection

- **Insufficient background-check authority.** The department does not have authority to require fingerprint background checks for both state and federal criminal history for several regulatory programs identified in the textbox, *Background-Check Authority*, potentially putting the public at risk. Conducting criminal background checks is an important tool for licensing agencies to gather complete information about individuals before officially validating that person’s fitness for licensure. While DPS is able to conduct name-based background checks for applicants, these checks are limited in their efficacy. Fingerprint-based checks, on the other hand, have become standard in many occupations and government agencies and provide the most accurate way of verifying an individual’s identity. Additionally, checks that only provide Texas criminal history may miss relevant convictions in federal or other states’ jurisdictions.
- **Burdensome renewal procedures.** Statute is overly prescriptive in regards to renewing certain licenses and certificates. An agency should have authority to stagger license renewals to promote an even workload throughout the year and reduce burdens to administrative staff. Agencies should also have a system of biennial license renewal to further ease administrative burdens and allow staff to more quickly process licenses. For most of its regulatory programs, DPS staggers biennial renewals throughout the year. However, by

statute, vehicle inspection station and inspector certificates expire on August 31 of each odd and even year, respectively.<sup>2</sup> With almost 12,000 stations and 44,000 inspectors, renewal is a large workload to handle at one time. Additionally, private security companies, schools, and instructors must renew their licenses annually, which unnecessarily adds to the department's workload.<sup>3</sup>

### Unclear enforcement processes waste resources and do not reflect standard practices.

The department's enforcement processes, including inspections and investigations, are inefficient and unfair to licensees.

- Wasteful inspection processes.** Department inspections misplace limited time and resources, especially when DPS' role in enforcing regulations is unclear. For example, salvage yards are regulated by the Texas Department of Motor Vehicles, but DPS is authorized to inspect records and parts to enforce certain related laws, like locating stolen car parts.<sup>4</sup> Even though DPS only received 32 complaints in fiscal year 2017, special agents from CID conducted over 500 inspections of salvage yards that same year, in addition to investigating cases. The department also reported that auditors from RSD conducted thousands of audits for vehicle inspection stations and inspectors in fiscal year 2017, in part to meet an internal goal of inspecting each public vehicle inspection station every 45 days. When asked why DPS conducts so many inspections, department staff explained that both salvage yards and vehicle inspection businesses can be fronts for criminal enterprises and frequent inspections serve a deterrent purpose. Although non-commissioned regulatory staff performs many audits, CID personnel — specially trained law enforcement agents that usually investigate organized crime — have been performing a significant number of regulatory inspections.<sup>5</sup> The table, *Regulatory Audits and Inspections*, provides additional information about audits and inspections performed by DPS.

In many regulatory agencies, using a risk-based approach to inspections better focuses limited staff and resources on the licensees that pose the highest risk to the public. Agencies should have a clear process for determining if a licensee needs to be inspected,

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*DPS aims to inspect every vehicle inspection station every 45 days, even if the station had no previous violations.*

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#### **Regulatory Audits and Inspections – FY 2017**

<b>Program*</b>	<b>Audits Reported by RSD</b>	<b>Inspections Reported by RSD**</b>	<b>Inspections Reported by CID**</b>
Emission Repair Facilities	200	0	0
Ignition Interlock Device Vendors	60	0	0
License to Carry a Handgun	0	6	0
Metal Recycling Entities	0	614	623
Precursor Chemical and Laboratory Apparatus	0	56	0
Private Security	1,514	1,824	1,843
Salvage Yards	0	504	559
Vehicle Inspections	100,862	0	0
<b>Total</b>	<b>102,636</b>	<b>2,998</b>	<b>3,025</b>

\* Only programs for which audits or inspections were conducted are included.

\*\* Due to data limitations, the inspections reported by RSD may include some inspections performed by CID.

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*Inconsistent complaint resolution processes reduce efficiencies and fairness for licensees.*

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rather than meeting arbitrary quotas, and identify what risk factors to consider for conducting an inspection, such as recent complaints, past violations or disciplinary actions, or significant changes in business management. Clear, risk-based inspection policies also keep regulated individuals on notice of the agency's expectations.

- **Unclear complaint resolution procedures.** The department's complaint resolution processes lack transparency and do not efficiently or fairly dispose of cases. The entire complaint process for an agency should be guided by clear rules, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public. Mismatched statutes prevent DPS from streamlining these systems and achieving greater internal efficiencies, and the department's incomplete rules only outline portions of the complaint process for each regulatory program. For example, statutes for the metal recycling entity, private security, and vehicle inspection programs all contain different requirements to act on complaints.<sup>6</sup> Rules for all of the regulated programs do not detail how investigations will be handled, and while rules acknowledge informal hearings exist for the metal recycling entities and private security programs, little detail is given about the participants, process, or information to be considered.<sup>7</sup> Instead, a single complaint process applicable to all of the regulatory programs would be easier for RSD to administer and would provide licensees and complainants clearer notice of DPS' procedures.
- **Statute is also unclear as to final enforcement authority.** For most regulatory programs, the director enters final orders to take disciplinary action against licensees. The Private Security Board enters final orders for private security licensees and registrants, as described in Issue 3 of this report. In most smaller licensing agencies, the policymaking body enters final orders against regulated individuals in contested cases, like those that are argued at the State Office of Administrative Hearings, and staff handle uncontested cases, like dismissals. However, in larger agencies with multiple functions, the policymaking body may delegate this authority to a designated individual. The efficiency gained by delegating final enforcement authority to staff must be balanced with licensees' due process, and the policymaking body should be notified about the disposition of cases. Clarifying the Public Safety Commission's authority to take final enforcement actions, or delegate this responsibility to the director or other designee, would create better consistency between regulatory programs and more notice to licensees of DPS' case resolution processes.
- **Missing informal settlement authority.** The department conducts informal hearings for the metal recycling entities program and some private security program cases, as shown in the table on the following page, *Informal and Preliminary Hearings*, but does not have authority to conduct informal settlements to resolve all complaints for all of the regulatory programs.<sup>8</sup> Formal hearings often require significant time and expense for both the agency and licensee, but other, informal means of resolving cases can reduce costs and still achieve a fair outcome that protects the public.

These settlement hearings should generally comply with the Administrative Procedure Act, and the process for the metal recycling entities program is held to that standard.<sup>9</sup> However, preliminary hearings for the private security program, and initial actions to summarily suspend license holders, are currently not subject to the Administrative Procedure Act.<sup>10</sup> Allowing DPS to hold informal settlements for all of its regulated programs would provide a single, clear process for more quickly resolving complaints, and requiring those settlement hearings and private security summary actions to comply with the Administrative Procedure Act ensures DPS is following consistent and coherent minimum standards for case resolution.

### **Informal and Preliminary Hearings FY 2017**

Program	Hearings
Metal Recycling Entities	39
Private Security	318
<b>Total</b>	<b>357</b>

- **Insufficient range of enforcement tools.** The department does not have adequate enforcement authority, undermining attempts to deter and address violations of rules and law. Licensing agencies should have a range of sanctions, and those sanctions should be applied consistently and scaled to the seriousness of the violation. Agencies should create guidelines for the use of sanctions, often called penalty matrices, to ensure disciplinary actions relate to the nature and seriousness of the offense and guide the determination of administrative penalty levels. The department's enforcement tools vary from program to program. For example, DPS lacks administrative penalty authority for the vehicle inspection program but has that authority for the private security program.<sup>11</sup> Additionally, DPS has created a comprehensive penalty matrix only for the vehicle inspection program and only administrative penalty schedules for the private security and metal recycling entities programs. A single set of sanctions would give DPS clear tools to enforce each of its programs' associated laws and rules, and penalty matrices would create consistency and fairness to licensees in each program for applying sanctions and administrative penalties.

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*DPS lacks adequate authority to consistently address regulatory violations.*

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- **Restrictive fee authority.** Fees for the vehicle inspection and metal recycling entities programs are inflexible and prevent DPS from adequately recovering the costs of regulating these groups. Fees for the vehicle inspection station and inspector certificates are set in statute, which precludes DPS from lowering or raising application fees based on administrative costs.<sup>12</sup> Similarly, statute includes a cap on the metal recycling entity registration fee.<sup>13</sup> As a general principle, agencies should be able to set fees as needed to cover the costs of operations and, when that fee revenue greatly exceeds appropriations, lower fees for licensees. The cost to administer both of these programs far exceeds the revenue generated by regulated entities, as shown in the table, *Administrative Costs and Revenue*. More flexibility in setting fees would allow DPS' regulatory programs to recover costs.

### **Administrative Costs and Revenue – FY 2017\***

Program	Cost to Administer	Fee Revenue	Difference
Metal Recycling Entities	\$992,729	\$231,478	\$761,251
Vehicle Inspection**	\$5,334,931	\$1,604,863	\$3,730,068

\* Costs and revenue reported by DPS

\*\* Does not include administrative costs for the emission inspection program.



## Recommendations

### Regulatory Management

#### *Change in Statute*

##### **4.1 Require DPS to track and annually report regulatory information on its website.**

This recommendation would require DPS in statute to maintain and regularly report licensing, investigative, and disciplinary information for each of its regulatory programs, providing policymakers, commission members, staff, stakeholders, and the public a more complete picture of DPS' regulatory efforts. This information should reflect compiled data for each program individually and DPS regulatory services as a whole, presented in a clear, organized manner that is publicly accessible on DPS' website. Under this recommendation, DPS' leadership and regulatory staff would work together to identify long-term solutions that are technologically reasonable and allow for useful, holistic tracking and reporting.

As a management action, DPS would be required to report the following minimum measurements and statistics for each fiscal year and type of license or registration:

- Applications received
- Applications denied by the reason for the denial (criminal history, experience, etc.)
- Number of licensees
- Average number of days to issue a license
- Total number of complaints
- Number of complaints by source (public, DPS, other agencies, etc.)
- Number of complaints by type (operating without a license, advertising violation, etc.)
- Number of cases referred to and number of cases resolved at informal settlement hearings
- Number of resolved complaints by each type of action taken (nonjurisdictional, dismissed, warning, suspension, etc.)
- Breakdown of resolved complaints by the nature of the allegation (operating without a license, advertising violation, etc.)
- Number of cases referred to the State Office of Administrative Hearings (default and non-default)
- Number of cases appealed to district court
- Average number of days to resolve a complaint, from received to investigation completed and from received to case closure

Posting this information on DPS' website would help the Public Safety Commission and policymakers judge the performance of DPS' regulatory services and improve transparency to stakeholders and the public. This information will allow DPS to evaluate trends in cases to inform decision making about its operations and prioritizing resources, as well as targeting inspections and enforcement efforts where most needed. Under this recommendation, DPS would begin posting available information for fiscal year 2019, and would be expected to have fully implemented this recommendation no later than September 1, 2020.

## ***Management Action***

### **4.2 Direct DPS to work with TDLR to develop regulatory processes and rules.**

This recommendation would direct DPS to work with TDLR to review existing practices and rules for opportunities to streamline and simplify DPS' regulatory functions, taking into consideration any recommendations adopted by the Sunset Advisory Commission. TDLR would assist DPS to develop more efficient, clear processes and rules to better manage DPS' regulatory programs through cooperative interagency discussions and should seek stakeholder input from regulated industries. DPS staff would propose regulatory improvements to the Public Safety Commission and director, as appropriate, for implementation or adoption no later than September 1, 2020. This recommendation would allow DPS and TDLR to determine the most appropriate means of collaborating and would authorize DPS and TDLR to enter into a memorandum of understanding if necessary.

## **Licensing**

### ***Change in Statute***

#### **4.3 Remove conflicting, nonstandard statutory definitions regarding convictions.**

This recommendation would remove the separate, inconsistent statutory definitions of conviction from the private security, metal recycling entity, and vehicle inspection programs. Under this recommendation, DPS would rely on the standard definition of conviction provided in Chapter 53, Texas Occupations Code, to better align DPS' criminal history evaluations with common regulatory practices and the Legislature's intent to reduce barriers to licensure.

#### **4.4 Remove unnecessary, subjective qualifications for applicants.**

This recommendation would remove the requirement that individuals employed in positions that require carrying firearms have "good moral character." This recommendation would not affect any requirements related to disqualifying criminal convictions or standards for physical or mental fitness to carry a firearm, and because DPS does not currently evaluate applicants' character, this recommendation would not affect current licensees or future applicants.

#### **4.5 Authorize DPS to conduct fingerprint-based criminal background checks for all applicants and licensees.**

This recommendation would authorize, but not require, DPS to conduct fingerprint-based state and federal criminal background checks for all applicants and licensees for DPS' regulatory programs, not just the Capitol access pass, license to carry a handgun, and private security programs. Most regulated individuals have already undergone a fingerprint-based state and federal background check, and this recommendation would not require those individuals to undergo additional checks. Some programs may not necessitate such a thorough vetting, so DPS should establish in rule which applicants and licensees would be subject to fingerprint-based background checks. Applicants and current licensees who have not yet undergone a state and federal background check would pay the approximately \$37 cost to submit fingerprints through DPS' vendor. The department should consider this cost to applicants and licensees when determining if fingerprint-based background checks are necessary.

#### **4.6 Authorize DPS to establish flexible license renewal requirements.**

This recommendation would remove from statute requirements to renew private security licenses annually and vehicle inspection certificates on specific dates, reducing staff time needed to renew licenses without



compromising oversight of licensees. This recommendation would instead clearly authorize DPS to stagger license renewals throughout the year and on a biennial basis for all of its regulatory programs, providing a single, clear approach to license renewal requirements.

### ***Management Action***

#### **4.7 Direct DPS to adopt a process for applying mitigating and aggravating factors in criminal history evaluations.**

Under this recommendation, DPS would adopt in rule procedures for applying mitigating and aggravating factors in evaluating criminal history for applicants and licensees. This process should cover the responsibilities of DPS staff and the applicant or licensee, outline procedures, and require DPS to retain documentation for any suspensions, denials, or revocations taken as a result of an individual's criminal history. While the process should be consistent, the mitigating and aggravating factors applied in evaluations should be tailored for the specific occupation.

#### **4.8 Direct DPS to cease permanently disqualifying individuals for certain convictions and review rules for compliance with Chapter 53, Texas Occupations Code.**

Although DPS has identified relevant convictions for each of its regulatory programs, this recommendation would direct DPS to better align its rules with the standards and intent of Chapter 53, Texas Occupations Code. Specifically, this recommendation would direct DPS to modify its rules to eliminate permanently disqualifying convictions and review rules applying blanket penalties for convictions related and unrelated to the occupation to ensure DPS practices are not unfairly restricting entry into a regulated industry.

### **Enforcement**

#### ***Change in Statute***

#### **4.9 Establish clear authority to receive, investigate, and resolve complaints.**

This recommendation would clarify DPS' authority to act on complaints against licensees by consolidating investigative authority under DPS' general statutes and requiring DPS to establish the entire complaint process in rule, including complaint intake, investigation, adjudication, resulting sanctions, and disclosure of final actions to the public. This recommendation would also require DPS to maintain documentation for each stage of complaint resolution. These changes would promote consistency between regulatory programs and improve transparency to licensees and the public.

#### **4.10 Clarify the Public Safety Commission's responsibility to take final enforcement actions for regulatory programs.**

Under this recommendation, statute would clearly make the Public Safety Commission responsible for taking all final enforcement actions for the regulatory programs under DPS' jurisdiction. However, statute would also authorize the commission to delegate this responsibility to the director. This recommendation would also require notice be given to individuals subject to final enforcement action of their rights to appeal final actions to the State Office of Administrative Hearings or district or municipal courts, as applicable.

#### **4.11 Require DPS to establish a process to informally resolve complaints.**

This recommendation would authorize DPS to create an informal complaint settlement process in rule for each of its regulatory programs. Statute would require informal settlement conferences be subject to

the Administrative Procedure Act, to ensure fairness and consistency, but DPS would be free to adopt the most efficient means of conducting these conferences. Statute that conflicts with the intent of this recommendation for existing informal hearings would be eliminated. Under this recommendation, the director, or the director's designee, would approve all informal agreements to ensure oversight of staff decisions and operations.

#### **4.12 Provide DPS a full range of sanctions to enforce regulations.**

This recommendation would consolidate DPS' authority to take enforcement actions against regulated individuals and provide a single, complete set of sanctions for each of its regulatory programs. Specifically, this recommendation would provide DPS the authority to deny, revoke, suspend, probate, reprimand, or refuse to renew a license, registration, or certificate for conduct that violates statute or rule applicable to each regulatory program. This recommendation would also authorize the department to assess administrative penalties against violators, issue cease and desist letters, and seek injunctions through the attorney general's office.

This recommendation would also require DPS to establish a penalty matrix for each program to guide the application of sanctions and administrative penalties for specific violations, ensuring consistency and fairness for licensees. The department should account for a variety of factors before applying sanctions, such as the licensee's compliance history, the seriousness of the violation, and any mitigating factors.

#### **4.13 Remove restrictive fee authority from statute.**

This recommendation would remove the fee cap for the metal recycling entity registration and eliminate the statutory fee amounts set for the vehicle inspection station and inspector certificates. Instead, DPS would be authorized to set the fees for both of these programs as necessary to recover the costs of administering each regulatory program. Fees for the vehicle inspection and metal recycling entities programs do not currently cover DPS' costs of regulation. The Legislature would continue to exert control and oversight of DPS' expenditures through the appropriations process to ensure license fees generate enough revenue in the future.

### ***Management Action***

#### **4.14 Direct DPS to adopt a risk-based inspection process.**

Statute already authorizes DPS to conduct inspections for each of its regulatory programs, but this recommendation would direct DPS to adopt a risk-based approach to better allocate limited staff and resources. Under this recommendation, DPS should adopt rules outlining the procedures for auditing and inspecting regulated entities and how it will determine when an audit or inspection will be conducted. The intent of this recommendation is not to avoid conducting audits or inspections but to ensure the regulatory impact on licensees is only as onerous as necessary to protect the public.

As to the salvage yard program, DPS does not regulate salvage yards and does not have a formal arrangement to assist the Texas Department of Motor Vehicles in enforcing laws and rules. The department should consider what, if any, role DPS staff should have in conducting inspections and work with the Texas Department of Motor Vehicles to coordinate these efforts and share relevant information to provide the state the most cost-effective means of overseeing these entities.

## Fiscal Implication

Overall, these recommendations should have a positive fiscal implication for the state but the amount cannot be estimated. Most of these recommendations could be implemented with existing resources, but the following recommendations would have some fiscal impact to the state:

Recommendation 4.1 would require DPS to explore technological options for improving its data management capabilities, including considering new database software. Any solution to the current patchwork of databases, and the functional benefits created by properly managed information, is not expected to cost more than maintaining DPS' current ineffective systems.

Recommendation 4.5 would expand fingerprint-based background check authority for certain programs at DPS' discretion. This recommendation would have a positive fiscal impact to general revenue from fees collected for submitting fingerprints, but because the number of individuals affected is unknown, the total impact cannot be calculated.

Recommendation 4.13 would likely result in a positive fiscal impact to the state by removing restrictive fee-setting authority for vehicle inspection station and inspector certificates and metal recycling entity registrations. The department would be expected to set fees sufficient to cover the costs of administering each program, but because the fee amount DPS will set is unknown, the total impact to general revenue cannot be calculated at this time.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 53.021, Texas Occupations Code.

<sup>2</sup> Sections 548.506 and 548.507, Texas Transportation Code.

<sup>3</sup> Section 1702.301(a), Texas Occupations Code.

<sup>4</sup> Sections 2302.0015(b) and 2305.007(b), Texas Occupations Code.

<sup>5</sup> Although RSD distinguishes between audits performed by non-commissioned officers and inspections performed by commissioned agents, there is no discernable difference between either action's intended goal to review an individual or business for compliance with department rules and law.

<sup>6</sup> Sections 1702.082, 1702.367, and 1956.152, Texas Occupations Code and Section 548.409, Texas Transportation Code.

<sup>7</sup> 37 T.A.C. Sections 35.64 (Private Security Preliminary Hearings) and 36.56 (Metal Recycling Entities Informal Hearings).

<sup>8</sup> Sections 1956.153, 1702.3615, and 1702.364, Texas Occupations Code. The department recently passed rules creating informal hearings for the vehicle inspection program but has not conducted any informal hearings for this program as of the time of publication. 43 Tex. Reg. 1444 (2018) (codified at 37 T.A.C. 23.63) (effective March 15, 2018).

<sup>9</sup> Chapter 2001, Texas Government Code and Section 1956.153(b), Texas Occupations Code.

<sup>10</sup> Section 1702.364(e), Texas Occupations Code. Results of preliminary hearings are appealable to the State Office of Administrative Hearings.

<sup>11</sup> Subchapter Q, Chapter 1702, Texas Occupations Code.

<sup>12</sup> Sections 548.506 and 548.507, Texas Transportation Code.

<sup>13</sup> Section 1956.014(b), Texas Occupations Code.

# ISSUE 5

## *Three DPS Regulatory Programs Are Not Necessary to Protect the Public.*

### Background

The Department of Public Safety (DPS) administers a diverse set of occupational licensing and other regulatory programs through its Regulatory Services Division. In fiscal year 2017, the division's 414 employees performed the licensing, inspection, and compliance of more than 1.4 million individuals and businesses in 10 regulatory programs, primarily the license to carry a handgun, private security, and vehicle inspection programs.

The Sunset Advisory Commission has a long history of evaluating regulatory programs, guided by standards set in the Sunset Act.<sup>1</sup> In 2013, the Legislature re-emphasized the need for a rigorous assessment of state regulation by adding criteria for Sunset reviews of licensing and regulatory programs, summarized in the textbox, *Sunset Licensing and Regulatory Questions*. Sunset reviews evaluate the need for agencies and programs; when evaluating licensing and regulatory programs, the burden is on proving the need for the regulation. The assessment of need occurs through a detailed analysis of the potential harm, whether in terms of physical harm or in more subjective terms, such as financial or economic loss. With these criteria in mind, Sunset staff reviewed the array of regulatory programs administered by DPS and identified three programs that fail to meet the need for continued regulation.

#### ***Sunset Licensing and Regulatory Questions***

- Does the program serve a meaningful public interest and provide the least restrictive form of regulation?
- Could the program's regulatory objectives be achieved through market forces, private certification and accreditation programs, or enforcement of other laws?
- Are the skill and training requirements consistent with a public interest, or do they impede applicants?
- What is the impact of the regulation on competition, consumer choice, and cost of services?

- **Precursor chemical and laboratory apparatus.** Texas regulates the sale and transfer of precursor chemicals and laboratory apparatuses (PCLAs) through one-time or annual permits issued by the department. The Legislature created the permit in 1989 to help stem the manufacturing of illegal drugs, in particular methamphetamine, by regulating the purchase and sale of certain equipment and substances.<sup>2</sup> The department issued 14 one-time and 1,367 annual PCLA permits in fiscal year 2017. Permit holders are also required to submit records of PCLA sales and transfers to DPS.<sup>3</sup>
- **Peyote distributors.** State law allows members of the Native American Church to possess and use peyote for legitimate religious and ceremonial purposes, but distributors must register with DPS.<sup>4</sup> In fiscal year 2017, the department registered four peyote distributors.
- **Ignition interlock device vendors.** In Texas, judges may require the use of an ignition interlock device (IID) as a consequence of certain intoxicated driving offenses.<sup>5</sup> The department's crime labs ensure devices meet federal standards, and DPS maintains a list of approved IIDs. Additionally, the department regulates the vendors who install IIDs, who must meet minimum business standards to operate in Texas. Vendors must also report violations of court orders to the appropriate court and

supervising officer, which supports judicial oversight of individuals required to use IIDs.<sup>6</sup> In fiscal year 2017, about 470 businesses were authorized IID vendors. Vendors must adhere to record-keeping, insurance, and other standards, and pay an annual inspection fee of \$450 to DPS.<sup>7</sup>

## Findings

### Regulating PCLAs is duplicative and unnecessary to protect the public.

- **Separate criminal laws better protect the public.** The PCLA permit was originally intended to reduce access to chemicals and equipment used to make drugs. However, the possession or transfer of chemical precursors with the intent to unlawfully manufacture a controlled substance is a crime regardless of an individual's permit status with the department.<sup>8</sup> The transfer of a laboratory apparatus may also be a crime in certain circumstances, but there is nothing inherently dangerous about possessing an Erlenmeyer flask.<sup>9</sup>
- **Duplicative regulation.** Most chemical precursors regulated through the PCLA program are also regulated by the U.S. Drug Enforcement Agency (DEA), and many DPS-permitted individuals and businesses hold DEA registrations to engage in regulated activities. Statute creates an exemption to state PCLA regulations if an individual holds a registration with the DEA, which generally regulates research, manufacturing, distribution, and analysis of controlled substances.<sup>10</sup> So, what may have once been intended as a more robust system to oversee these transactions in effect has a lesser reach.
- **No meaningful enforcement activity.** DPS has taken no enforcement actions against a permit holder in the past decade, demonstrating individuals' and businesses' general willingness to control the possession and transfer of PCLAs. Additionally, despite collecting records of PCLA transactions, DPS does not evaluate these records to ensure compliance with regulatory standards or identify possibly prohibited transactions.

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*DPS has not disciplined a PCLA permit holder in the past decade.*

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### Regulating four legal peyote distributors is duplicative and unnecessary to protect the public.

- **Existing criminal laws and federal regulation better address illicit activity.** Generally, the possession and distribution of peyote is a felony under Texas law unless used in bona fide religious ceremonies by members of the Native American Church.<sup>11</sup> Individuals who provide peyote to the church must register with and maintain records as directed by DPS.<sup>12</sup> Federal law also requires individuals to obtain a DEA registration to provide peyote for legitimate use by members of the Native American Church.<sup>13</sup> In fact, individuals are required to have a DEA registration as a condition to registering with DPS, essentially just duplicating federal regulations.<sup>14</sup>
- **No meaningful enforcement activity.** Recognizing duplication with the DEA, the department no longer audits peyote distributors and defers

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*State registration of peyote distributors duplicates DEA regulation.*

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instead to DEA processes and oversight. Additionally, the department has not taken enforcement action against a license holder in the past decade.

### **Regulating ignition interlock device vendors creates more of a burden to conducting business than a benefit to public safety.**

- **Separate laws better protect consumers.** State law requires manufacturers to calibrate and maintain devices, which DPS labs annually assess against federal standards and list approved devices.<sup>15</sup> Individuals ordered by the court to use an IID are ultimately responsible for complying with those orders, and any tampering with a device could subject that person to significant legal consequences. Regulating the business standards of vendors who install IIDs does not replace individuals' culpability or the court's prerogative to ensure compliance with its orders but does create an unnecessary bureaucratic barrier to doing business in Texas.
- **Regulation adds little value.** The department's regulation of vendors adds an unnecessary burden to doing business in Texas. Regulation consists of a one-page inspection checklist focused on business features, such as whether vendors have a waiting area and use approved devices. These simple inspections clearly have a nominal impact to public safety.
- **No meaningful enforcement activity.** Although the department can revoke a vendor's authority to conduct business for violations of state law or department rule, it has never done so.

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*Since the devices are fully regulated, regulating the vendors is an unnecessary burden on these businesses.*

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## **Recommendations**

### ***Change in Statute***

#### **5.1 Discontinue regulation of precursor chemical and laboratory apparatus sales and transfers.**

This recommendation would remove the statutory requirement for individuals who sell, transfer, or purchase PCLAs to obtain a permit as well as the associated criminal penalties for transactions without a permit.<sup>16</sup> Statute would continue to require individuals and companies who sell, transfer, or otherwise furnish PCLAs to maintain records of transactions, and they would still be required to report any loss or theft to the department, but the duty to submit transaction records to DPS would be eliminated.

#### **5.2 Discontinue duplicative registration of peyote distributors.**

This recommendation would remove the registration of peyote distributors from statute and clarify that individuals who distribute peyote to the Native American Church will continue to be exempt from state criminal penalties for possession or distribution of that substance. Federal law adequately regulates individuals engaged in peyote distribution through the DEA.

#### **5.3 Discontinue regulation of ignition interlock device vendors.**

This recommendation would remove the regulation of IID vendors from statute. However, the department would continue to annually inspect IIDs against federal standards and maintain a list of

approved devices. To support judicial efforts to detect and prevent drunk driving, this recommendation would also modify statute to preserve the requirement that vendors only use devices approved by the department and continue to report violations to the appropriate court and supervising officer within 48 hours, maintaining the standard expectation that vendors be responsive to judicial processes.

## Fiscal Implication

The recommendations to eliminate these three regulatory programs would result in a small negative fiscal impact to the state, since the fees collected are greater than the cost to regulate.

Recommendations 5.1 and 5.2 would not have a significant fiscal impact. The department does not collect permit, registration, or inspection fees for the PCLA and peyote programs and does not separately budget for these small programs' administration costs.

Recommendation 5.3 to deregulate IID vendors would result in a loss of about \$185,900 in revenue reported by DPS associated with annual inspection fees, offset by the estimated \$112,600 cost of administering the program.

### ***Department of Public Safety***

<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>
2020	\$73,300
2021	\$73,300
2022	\$73,300
2023	\$73,300
2024	\$73,300

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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.0115, Texas Government Code.
  - <sup>2</sup> Chapter 776 (S.B. 29), Acts of the 71st Legislature, Regular Session (1989).
  - <sup>3</sup> Sections 481.077 and 481.080, Texas Health and Safety Code.
  - <sup>4</sup> Section 481.111, Texas Health and Safety Code.
  - <sup>5</sup> Section 521.246, Texas Transportation Code.
  - <sup>6</sup> Section 521.2476(b)(7), Texas Transportation Code.
  - <sup>7</sup> 37 T.A.C. Section 10.15.
  - <sup>8</sup> Sections 481.124 and 481.137, Texas Health and Safety Code.
  - <sup>9</sup> Section 481.139, Texas Health and Safety Code.
  - <sup>10</sup> Sections 481.077(c) and 481.080(d), Texas Health and Safety Code.
  - <sup>11</sup> Sections 481.111, 481.114, and 481.117, Texas Health and Safety Code.
  - <sup>12</sup> Ibid.
  - <sup>13</sup> 21 U.S.C. Sections 821–831; 42 U.S.C. Section 1996a; 21 C.F.R. Section 1307.31.
  - <sup>14</sup> 37 T.A.C. Section 13.31.
  - <sup>15</sup> Sections 521.247 and 521.2475, Texas Transportation Code.
  - <sup>16</sup> Sections 481.136(a)(1) and 481.138(a)(1), Texas Health and Safety Code.



# ISSUE 6

## *DPS' Management of the Motorcycle Safety Program Wastes State Resources.*

### Background

In 1983, the Legislature established a motorcycle operator training and safety program, leaving the governor to designate a state agency to administer the program. Governor Mark White designated the Department of Public Safety (DPS) to be that agency. In 1989, Governor William Clements designated DPS to administer an all-terrain vehicle (ATV) safety program to make courses available in basic training and safety skills for operating an ATV. To legally operate a motorcycle in Texas, a person must complete a DPS-approved motorcycle safety course and, if under age 18, also pass a skills test and complete minimum driver education requirements.<sup>1</sup> To legally ride an ATV on public lands or beaches, a person must complete a DPS-approved ATV safety course.<sup>2</sup>

While DPS has largely contracted out administration of the much smaller ATV program with a national nonprofit organization, the agency uses nine full-time staff and four contracted staff to administer the motorcycle safety program. The program spent almost \$2.3 million in fiscal year 2017, almost all of which came from the Motorcycle Education Fund. A portion of each motorcycle license fee is deposited to the fund, which had a balance of \$16.8 million at the end of fiscal year 2017.<sup>3</sup>

The department licenses or contracts with 79 sponsors — which can be nonprofit organizations like community colleges or private businesses like motorcycle dealers — that provide space to conduct the safety courses. The department also trains and approves instructors who teach motorcycle safety courses using the curriculum developed by the Motorcycle Safety Foundation (MSF), a national nonprofit organization dedicated to motorcycle safety education. Only a state-approved instructor can be hired by a sponsor to teach motorcycle courses. Department staff also provide about 30 training courses each year in rural parts of the state using two mobile teams and, along with contracted trainers, conduct quality assurance audits.

Almost 34,000 individuals took the motorcycle safety course in 2017. The department caps the course fee students pay to contracted sponsors at \$250, and all sponsors keep the entire fee. The table, *DPS Motorcycle and ATV Safety Training*, provides more detail about the programs' activities.

***DPS Motorcycle and ATV Safety Training – 2017***

Motorcycles	
Sponsors	79
Training Sites	275
Instructors	378
New instructors trained by DPS	23
Persons trained	33,911
Audits of sponsors	34
Enforcement actions	5
ATV	
Instructors	142
Persons trained	1,027

## Findings

### Texas continues to have an interest in providing motorcycle safety training.

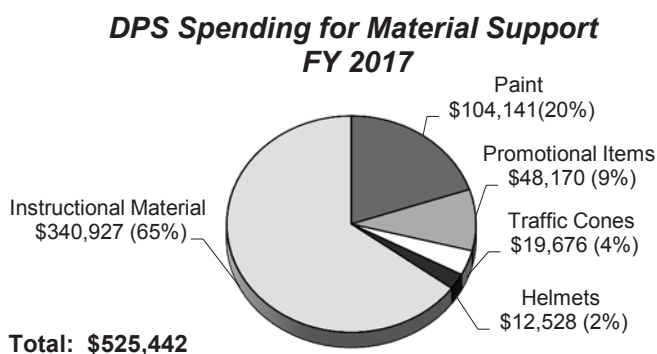
Texans continue to benefit from proper motorcycle safety training. Motorcyclists are about 27 times more likely than passenger car occupants to be involved in a fatal motor vehicle accident, according to the National Highway Traffic Safety Administration, and a recent Texas study found that about one in every four motorcycle crashes were fatal between 2010 and 2016.<sup>4</sup> Proper understanding of motorcycle operation and safety provides a first line of defense against tragedies. Also, Texas receives about \$300,000 annually in federal transportation funding that it would lose if the program ceased to exist. Texas uses this federal funding to promote motorcycle awareness and safety.

*DPS has loaned more than 800 state-owned motorcycles to 36 training course sponsors.*

### Providing material support to private motorcycle training providers wastes public resources.

The department has not appropriately administered the motorcycle safety program. The department provides the majority of sponsors — mostly private businesses — with significant material support at no cost, spending state funds to subsidize the private sector. This support has included helmets, traffic cones, and even loaned motorcycles, although DPS is not required or directed to provide this assistance. Further, DPS does not have rules or policies that outline how motorcycles are loaned to sponsors or how many motorcycles may be loaned to a single sponsor. As of January 2018, DPS had loaned more than 800 state-owned motorcycles to 36 sponsors, with a single sponsor receiving 227 of them.

Essentially, DPS helps keep sponsors and instructors in compliance with MSF standards. When MSF updated its curriculum in 2017, which included changes to the design of the training range for riding instruction, DPS spent \$104,000 on paint, in addition to staff time, to repaint training ranges for sponsors. The department also provides traffic cones, instructional materials, and promotional items, like pens, to sponsors. In total, DPS spent over \$525,000 in material support for instructors and sponsors in fiscal year 2017, detailed in the pie chart, *DPS Spending for Material Support*. The department spent just under \$60,000 on material support the previous year in anticipation of the fiscal year 2017 expenses.



Instructional material includes student handbooks and instructor guides that a majority of other states require sponsors to purchase themselves. According to DPS, material support was initially intended to temporarily assist the motorcycle safety training industry as it got off the ground until it became self-supporting. However, DPS has continued this practice, giving motorcycle training providers little reason to take on these costs.

## DPS oversteps its role in motorcycle safety training.

- **Questionable involvement in instructor training.** Statute authorizes DPS to determine the qualifications for instructors and certification requirements, but does not require DPS to provide the training to qualify instructors.<sup>5</sup> However, DPS is heavily involved in training motorcycle instructors and now hosts nine-day training courses for motorcycle instructors following a curriculum developed by MSF. Four DPS staff are MSF-certified instructor trainers and travel throughout the state to show instructors how to teach the MSF basic motorcycle course to prospective students. Department staff trained 23 new instructors in 2017. Courses cost \$200, and instructors who complete the DPS course qualify for both national certification through MSF and state approval by DPS to teach motorcycle training courses.

Some oversight of instructors is appropriate. The department's main contributions to regulation — checking criminal history and driving records and enforcing DPS rules — serve a valuable public interest by ensuring instructors provide safe, competent motorcycle lessons. As shown in the table, *Enforcement Actions*, DPS takes little enforcement action against instructors, mostly for expired MSF certification. However, both sponsors and instructors must adhere to a set of ethics rules. These licensing and enforcement functions are traditional state responsibilities, whereas training the individuals who are eventually regulated by the people who trained them is not. For example, the Texas Department of Licensing and Regulation (TDLR) — the state's umbrella regulatory licensing agency — approves instructors, providers, and courses for its driver training, massage therapy, and offender education programs, but does not train instructors for any of those programs. Likewise, the Texas Commission on Fire Protection approves providers and courses for education of its licensees but does not train instructors.

***Enforcement Actions***

Violation	FY 2017	FY 2016	FY 2015
Sponsor Ethics Violation	2	0	0
Instructor Ethics Violation	3	2	3
Expired MSF Certification	0	22	50
Suspended Driver License	0	0	1
<b>Total</b>	<b>5</b>	<b>24</b>	<b>54</b>

- **The private sector can provide motorcycle safety courses.** The established population of approved motorcycle training instructors makes it unnecessary for the state to expend limited funds and resources to provide training. DPS provides about 30 motorcycle safety courses each year to almost 190 students primarily in rural areas through two mobile units. The department assigns each mobile unit a pickup truck, trailer, and several motorcycles to use in courses. However, with 378 state-approved instructors across Texas, including rural areas of the state, DPS does not need to be a provider in the industry it regulates. Rather, private market forces should be allowed and expected to provide services to meet the demand of consumers, in this case students willing to pay for motorcycle safety training.

**The Texas Department of Licensing and Regulation could better administer and oversee the motorcycle and ATV safety programs.**

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*The Legislature transferred the driver training program to TDLR in 2015.*

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The Texas Department of Licensing and Regulation regulates more than 738,000 individuals and businesses in a variety of trades and professions, and has proven itself through successfully receiving and streamlining 23 regulatory programs transferred to the agency since 2001. TDLR also has experience administering programs similar to the motorcycle and ATV safety programs. In 2015, the Legislature transferred the parent-taught driver education program from DPS and the driver education and safety program from the Texas Education Agency, including regulation and oversight of driver education instructors, to TDLR. Since being transferred, this program has fared well. TDLR has streamlined and simplified rules, offers more services online for consumers, and is developing the nation's first driver education course in American Sign Language.<sup>6</sup> Apart from this experience improving a similar program, TDLR offers a statewide presence with inspectors in every part of the state that oversee many different businesses and industries. As the state agency with the most institutional knowledge about licensing private businesses and providing consumer protection, TDLR would be a more appropriate choice to house the motorcycle and ATV safety programs. The programs would receive more attention at TDLR than at DPS, which is appropriately more focused on its important law enforcement responsibilities.

## Recommendations

### *Change in Statute*

#### **6.1 Transfer the motorcycle and ATV safety training programs to the Texas Department of Licensing and Regulation.**

This recommendation would transfer responsibility for the motorcycle and ATV safety programs to TDLR no later than September 1, 2019. As part of this recommendation, DPS should provide TDLR access to any information, records, property, or data necessary for the transfer of the programs. This recommendation would also name TDLR as the agency responsible for administering the motorcycle and ATV safety training programs in statute, removing the requirement that the governor designate a state agency responsible for program management. TDLR's regulatory expertise in providing consumer and business services would provide more efficient administration and oversight of these programs and would allow DPS to focus on its core law enforcement functions. The recommendation would also direct Sunset staff to work with staff from the Texas Legislative Council and TDLR to draft legislation that ensures an orderly transfer of these programs and conforms these programs with TDLR's regulatory model including removal of outdated staffing requirements and harmonizing conflicting statutory requirements.

### *Management Action*

#### **6.2 The department and TDLR should develop a transition plan for the transfer of the motorcycle and ATV safety training programs.**

Transition planning should begin upon passage of the legislation, and the transition plan should include

- a timetable with specific steps and deadlines needed to carry out the transfer;

- a method to transfer all program and personnel records to TDLR;
- steps to ensure against any unnecessary disruption to services to sponsors, instructors, and students; and
- other steps necessary to complete the transition of programs.

### **6.3 Direct DPS to discontinue subsidizing motorcycle safety training course operators.**

This recommendation would eliminate the practice of lending motorcycles to sponsors and providing other material support. In accordance with provisions of the state surplus property program and other state requirements, DPS would develop and implement a plan to dispose of its loan motorcycles by August 31, 2019, before the program transfers to TDLR. The department could maintain as many motorcycles as needed to continue training its own staff. The department would report to the Sunset Commission the status of its implementation of this recommendation by October 1, 2019.

### **6.4 Direct DPS to discontinue providing motorcycle safety training.**

Under this recommendation, the state would no longer provide instructor training or motorcycle safety courses. To minimize disruption to the industry and students, DPS would phase out its instructor training and safety courses no later than August 31, 2019. The department, and then TDLR, would continue to approve sponsors and instructors to provide motorcycle safety courses, and conduct quality assurance audits. Maintaining this regulation would ensure Texas continues receiving federal transportation funds for motorcycle safety awareness. The department would report to the Sunset Commission its implementation of this recommendation by October 1, 2019.

## **Fiscal Implication**

Overall, these recommendations would have a positive fiscal impact of \$463,000 annually beginning in fiscal year 2020 and a reduction of three full-time positions through the elimination of material support to the private motorcycle safety industry and reduced motorcycle safety program staff.

Recommendation 6.1 to transfer oversight of the motorcycle and ATV safety programs to TDLR would not result in a fiscal impact to the state. Accounting for the cost savings and eliminated full-time positions identified below, TDLR would be able to administer the program with six staff positions that would transfer from DPS to TDLR with these programs, along with about \$418,000 in associated salaries and benefits. The ATV safety program currently operates through a no-cost cooperative agreement with the All-Terrain Vehicle Safety Institute, which could be continued at TDLR.

Recommendation 6.3 would eliminate the state's subsidies for motorcycle course providers, resulting in a savings of about \$292,000 in materials and supplies each year beginning in fiscal year 2020. Additional one-time gains to general revenue could be achieved if DPS sells the 802 motorcycles currently on loan to motorcycle training sponsors, but the resale value of these motorcycles cannot be estimated at this time.

Recommendation 6.4 would also result in a positive fiscal impact of about \$171,000. Ending instructor education programs would reduce the need for MSF-certified instructor trainers on staff, but three of those positions could be repurposed as inspector positions at TDLR. The reduction of one instructor trainer would result in a savings of about \$70,000 in salary and benefits beginning in fiscal year 2020. Additionally, eliminating DPS' mobile training groups would eliminate the need for two mobile training specialist positions, one of which TDLR could replace with a customer service representative, resulting in a reduction of one full-time position and savings of about \$56,000 in associated salary and benefits.



The department would determine how to use or dispose of the mobile training equipment, which could result in one-time gains to general revenue. However, the resale value of these materials is unknown. The reduction in workload would also reduce the need for administrative assistance, resulting in a cost savings of about \$45,000 and eliminating one full-time position. The department also contracts with four instructor trainers who conduct quality assurance audits of sponsors and instructors. However, Texas has a continuing need for quality assurance of motorcycle safety courses, so these funds should remain with the program.

***Department of Public Safety***

<b>Fiscal Year</b>	<b>Savings to the Motorcycle Education Fund (General Revenue – Dedicated)</b>	<b>Change in Number of FTEs From FY 2019</b>
2020	\$463,000	-3
2021	\$463,000	-3
2022	\$463,000	-3
2023	\$463,000	-3
2024	\$463,000	-3

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 521.148 and 521.165(d), Texas Transportation Code.

<sup>2</sup> Section 663.031, Texas Transportation Code.

<sup>3</sup> Section 662.011(a), Transportation Code and Department of Public Safety, *Annual Financial Report for Year Ended August 31, 2017*, (Austin: Department of Public Safety, 2017), 23.

<sup>4</sup> National Highway Traffic Safety Administration, *Motorcycle Safety*, accessed March 27, 2018, <https://www.nhtsa.gov/road-safety/motorcycle-safety>; Texas A&M Transportation Institute, *Comprehensive Analysis of Motorcycle Crashes in Texas: A Multi-Year Snapshot* (College Station, September 2016) accessed March 27, 2018, [http://www.looklearnlive.org/wp-content/uploads/2016/12/MOTO\\_ReportRev1a.pdf](http://www.looklearnlive.org/wp-content/uploads/2016/12/MOTO_ReportRev1a.pdf).

<sup>5</sup> Section 662.004, Texas Transportation Code.

<sup>6</sup> Chapter 415 (S.B. 1051), Acts of the 85th Texas Legislature (2017) (requiring TDLR to develop a driver education course for presentation in American Sign Language).



# ISSUE 7

## *DPS Needs Enhanced Accountability and Efficiencies in Contracting and Purchasing.*

### Background

To carry out its extremely broad and important mission — to protect and serve Texas — the Department of Public Safety (DPS) administers and manages more than 1,000 active contracts, with a total contract value of \$1.6 billion. These contracts support the department's main functions of traffic and commercial vehicle law enforcement; criminal law enforcement; border security operations; driver license and regulatory services; and emergency management. The department's contracts range from fingerprint services and contraband incineration to building leases and janitorial services. The table, *Largest DPS Contracts*, provides information about the department's top five active contracts. The department's roughly 9,000 purchase orders in fiscal year 2017 ranged from about \$9 for stamps and \$10 for office supplies to \$11.6 million for bulk fuel and nearly \$5 million for body cameras.

Since 2012, the department's approach to procurement and contracting has been centralized but requires significant coordination between the central Procurement and Contract Services (P&CS) office and the department's various divisions. Although P&CS staff acts as the contract manager, each division has a contract monitor who is trained to monitor deliverables, track contract execution, and report on vendor performance. In 2017, DPS also established a purchase liaison program, which trains division employees on how to purchase low-risk items, including many day-to-day operational items like office supplies.

The value of a contract or purchase order determines the level of review and approval beyond each division's internal approval process, which varies by division. Appendix E provides a flowchart of the procurement process, which can include review and approval by other divisions as well as the Executive Contract Review Board and Deputy Director before being assigned to a procurement lead in P&CS, and review and approval by the full Contract Review Board before actually being procured. This final step can take anywhere from five business days to 13 months, depending on the complexity of the item. Appendix F provides additional information on the Executive Contract Review Board and the full Contract Review Board.

At the time of this review, DPS was experiencing some growing pains with its contracting and procurement processes, particularly in establishing and implementing agencywide procedures to comply with recent state purchasing requirements such as those required by Senate Bill 20 from the 84th Legislative

***Largest DPS Contracts – FY 2017***

Contracts	Vendor	Total Contract Amount
Crime Lab Expansion	Texas Facilities Commission	\$200,900,000
Driver Responsibility Program	Gila, LLC	\$71,400,000
Fleet Management	Voyager Fleet Systems, Inc.	\$48,000,000
Fingerprint Applicant Services of Texas (FAST)	IDEMIA	\$38,200,000
Equipment Lease	Motorola Solutions Inc.	\$36,000,000

Session. The department was, and continues to be, in the process of pursuing a number of efficiencies for contracting and purchasing, including establishing blanket contracts for recurring needs, and is preparing to transition to the Centralized Accounting and Payroll Personnel System (CAPPS) by September 2018.

## Findings

### **Several DPS contracting and purchasing procedures do not fully align with best practices, contributing to inefficiencies in contract management and operational difficulties.**

When evaluating an agency's contracting operations, Sunset uses the general framework established in the *State of Texas Contract Management Guide*, as well as documented standards and best practices compiled by Sunset staff. While DPS has begun making improvements to its contracting and purchasing operations, the department needs to ensure its improvements address the following issues.

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*DPS staff at multiple levels complained that purchasing had become significantly more cumbersome and inefficient.*

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- **Too many layers of review but not enough accountability.** The department has struggled to adjust to the strengthening of state contracting requirements since 2015. Sunset staff observed a disconnect between division staff and P&CS staff that appears to be due at least in part to a lack of information and appropriate training on contracting and purchasing for DPS personnel. Throughout the Sunset review, DPS staff at multiple levels and from various divisions, both at central headquarters and in offices in other parts of the state, complained that purchasing had become significantly more cumbersome and inefficient, often entailing lengthy delays. Looking into this further, Sunset staff found some of this disconnect resulted from staff not understanding or being trained on some of the new state procurement requirements and rules. For example, DPS employees were used to purchasing office supplies through Office Max's online portal. In 2017, the comptroller's office signed a new general office supply contract that ended the use of the portal and now requires state agencies to purchase from the state's "set-aside" programs, such as the state use program and Texas Correctional Industries. In addition, agencies are required to issue a purchase order in the TX SmartBuy system for items available on state contract, rendering DPS unable to use the state credit card as an efficient means to purchase those items. Many DPS staff were unaware of these changes and repeatedly expressed frustration about ordering office supplies.

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*DPS' own analysis uncovered undue levels of review.*

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Some of this struggle is also attributable to the lack of functionality in DPS' electronic procurement system. Making matters worse is how the procurement process is replete with bureaucracy, causing unnecessary delays in acquiring needed goods and services like office supplies and furniture installation services. While DPS indicates its lack of exemptions from the state's procurement process creates this bureaucracy, the department's own internal analysis uncovered undue levels of review even for its low-risk purchases. For instance, DPS requires employees to submit an original purchase order every time basic commodities like office supplies and uniforms are needed, and DPS requires review and approval by its office of general counsel before both solicitation and award. In contrast to these

layers of review, the Public Safety Commission delegated all of its contract review and approval authority to the director in 2015. As a result, the commission, the ultimate oversight authority of DPS, does not vote to approve any contracts, not even major contracts valued at more than \$10 million, and is not accountable for the substantial volume of contracting DPS performs, in both number and value.

- **Poor overall procurement process tracking.** Agencies should assess the performance of internal contracting processes to identify bottlenecks and other areas for improvement, including the time it takes to procure goods and services. Whether DPS' procurement lead-time is appropriate is unclear. The department identifies problems in its procurement process by using each request's status updates and acquisition plan. Contract managers monitor for potential process issues and delays and elicit feedback from stakeholders. However, DPS does not have a system that is capable of collecting broad data to allow for the identification of potential issues or logjams in the various workflow steps of its procurement process.

The department anticipates replacing its electronic procurement system with CAPPs will enhance its contract monitoring and management processes. As observed in other agencies' implementation of CAPPs, the new system should provide DPS comprehensive purchasing activity data showing each step of a purchase request. Currently, DPS manually tracks procurement workflow by monitoring and documenting the acquisition plans to identify any lags or changes in target dates. However, DPS will still need to improve its process for tracking key procurement and contract delivery milestones to measure its internal efficiency, and more quickly identify and respond to any procurement bottlenecks and issues.

- **No master contract files.** To be best positioned to monitor its contracts and respond to potential issues that could arise during contract execution, an agency should maintain one complete master contract administration file for each contract and keep these files in a central contract repository. Centralization of contract documentation also better facilitates outside oversight. Despite the State Auditor's Office raising concerns about DPS' ability to monitor large high-risk contracts effectively, the department still lacks a single, consolidated location for all contract information.<sup>1</sup> P&CS staff maintains all award, contract management, and administration documentation in DPS' major contracts library for all major contracts and purchase orders, and separately maintains all solicitation documentation, such as each contract's planning and solicitation documents and budget, in its separate electronic procurement system it implemented in September 2015.

Before implementing the electronic procurement system, DPS maintained all of this documentation in hard copy files, exacerbating the risk of losing critical information; in some cases, DPS has lost important documentation of expenditures and approval of cost transfers.<sup>2</sup> Because DPS maintains required documentation in two places, it took a month to respond to Sunset

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*DPS lacks a system to collect data needed to identify procurement issues or logjams.*

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*DPS took a month to respond to Sunset's request for documentation for just eight contracts.*

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staff's request for full documentation for just eight of the department's more than 1,000 contracts, and DPS was unable to locate certain documents requested. Finance staff, P&CS staff, and contract monitors maintain other contract-related documentation, such as correspondence, information from meetings with vendors, and other financial records in separate locations. Maintaining this information, while not required by state law, is considered a best practice, and the lack of consolidated information and documentation reduces DPS' ability to effectively monitor high-risk contracts.

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*DPS struggled to provide a complete and accurate list of all its active contracts.*

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An agency should also maintain complete and accessible data on its contracts; clearly and completely document and justify contracting decisions; and post up-to-date information on its website. Posting up-to-date contract information on an agency's website has long been considered a best practice and became law for certain contracts in 2015.<sup>3</sup> However, further demonstrating DPS' problem with a lack of centralization of contract documentation and adequate functionality of its current electronic procurement system is its failure to keep the contract information on its website up to date. The department asserts it posts all of its contracts on its website, but whether the posted list of contracts includes all active contracts for the current fiscal year is unclear. Out of a random sample of eight contracts evaluated, Sunset found three were out of date, as DPS awarded these contracts before 2015 when the law changed. Also, while DPS has indicated its intention to request an appropriation for a document management and retrieval system, during the Sunset review the department struggled to provide a complete and accurate list of all its active contracts, an accurate dollar amount for individual active contracts, and the total value of all its active contracts.

- **Questionable competition and best value in contracts.** The comptroller's office requires DPS, like most agencies, to submit requests for delegation to purchase goods or services that are either not available on an existing state contract or exceed certain dollar limits — \$50,000 or more for commodities and \$100,000 or more for services. While DPS contends the delegation request process needlessly adds to length of procurements, the department admits it struggles with timely and effectively designing specifications for its contract solicitations. Poorly designed specifications, in turn, often result in the submission of delegation requests to the comptroller's office with insufficient time to procure it before the commodity or service is needed. Sunset staff also found the comptroller's office has denied numerous DPS requests for delegated authority because the specifications were either not updated or structured so narrowly that they appeared to favor a specific vendor.

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*Some specifications were either not updated or structured so narrowly they appeared to favor a specific vendor.*

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The State Auditor's Office has identified these same specification issues that could be of concern in the rebidding of the card production contract for several of DPS' regulatory programs, including driver and handgun licenses. Currently, the same vendor, IDEMIA (formerly MorphoTrust) fulfills both the contract for the Fingerprint Applicant Services of Texas (FAST) — the system DPS uses for performing fingerprint background

checks — and the card production contract. The combined value of these two contracts is nearly \$98 million. A 2015 audit by the State Auditor's Office revealed that DPS only received one solicitation for the FAST contract and that DPS did not document whether it had re-reviewed the solicitation for unduly restrictive requirements or feedback it had received from vendors about its proposed solicitation, incongruous with the direction in the *State of Texas Contract Management Guide*.<sup>4</sup> In accordance with a state law passed in 2017, DPS has to rebid the card production contract due to the unusually large number of renewal options in the current contract.<sup>5</sup> The current vendor has had the contract since the 1970s, but DPS has not yet produced an internal analysis for restructuring the solicitation to adequately ensure competition among vendors and best value for the state.

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*The current vendor has had the card production contract since the 1970s.*

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- **Inadequate planning and analysis for outsourcing.** While contracting major governmental functions to the private sector has reduced government expenditures in many instances, Texas at times has experienced overinflated contract costs that undermine the state's ability to obtain intended savings. In other instances, the state has seen the scope of major contracts expand over time, resulting in the incumbent vendor developing a built-in advantage to the point that other vendors cannot compete for the business. In such cases, the state is essentially left at the vendor's mercy. Before deciding to outsource a major agency function, a state agency should develop a business case that compares and documents the costs of efficiently providing the service internally to the cost of outsourcing the function.

The department currently outsources several major responsibilities, including the driver responsibility program, at a cost of \$71.4 million; disaster grant compliance, at a cost of \$69 million; and production of driver and other licenses and identification, at a cost of \$60 million. To decide whether to outsource rather than perform a function in-house, DPS produces a business case, taking into account the nature of the task and availability of resources to justify contracting. However, while DPS reports it has recently begun documenting a cost-benefit analysis as part of its needs assessment, the department did not perform a cost-benefit analysis as part of its process for some of its largest contracts. The business cases for major, high-value contracts Sunset staff reviewed merely state DPS lacks sufficient resources to perform the function. The business case documents contain no actual analysis to demonstrate, particularly over the long term, that contracting with an outside vendor would be more cost effective than developing and retaining the capacity to perform the function internally.

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*DPS did not perform a cost-benefit analysis for some of its largest contracts.*

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## Recommendations

### *Management Action*

#### **7.1 Direct DPS to analyze its contracting and purchasing procedures, and align its levels of review, approval, and accountability with the value and complexity of the contracts and purchases.**

Under this recommendation, DPS would conduct a risk assessment to transition from multiple reviews of low-risk contracts by DPS managers and attorneys to a simplified review. The intent of this recommendation is to reduce the number of reviews and approvals required for low-risk contracts and enable non-procurement and contracting staff to understand and build in appropriate purchasing lead times. As part of the assessment, DPS should closely examine state purchasing requirements and work with the comptroller's office to identify ways to increase timeliness and reduce unnecessary steps.

This recommendation would also direct the Public Safety Commission to assess its involvement in contract review and approval, and reconsider its complete delegation to the director. The commission should consider establishing a dollar amount and risk level for contracts that would require a commission vote for approval, thereby increasing accountability for DPS' highest-risk contracts. The commission would have the option of limiting its voting on contract approval to just two-party contracts, excluding purchase orders. For example, two-party contracts worth more than \$10 million make up less than four percent of DPS' active contracts, and the commission would have the option to set the threshold at an amount higher or lower than \$10 million. The commission's current practice of meeting every two months provides sufficient frequency to ensure voting to approve certain contracts will not delay their award particularly once DPS works the approval step into its contract development timing. This recommendation would not affect the commission's ability to allow the director to exercise signature authority.

#### **7.2 Direct DPS to track, analyze, and report contracting and purchasing data through all phases of the procurement process.**

To enhance timeliness and efficiency, this recommendation would direct DPS to better measure the health and performance of each stage of its contracting and purchasing process. For an agency with a contracting portfolio as large and complex as that of DPS, a need exists to track key procurement and contract delivery milestones to measure the department's internal efficiency and respond to any delays in the process. Having clear, accurate information would allow DPS to evaluate the performance of all participants in the contracting and purchasing process, quickly identify causes of delays or other problems, and continuously improve procurement of the goods and services needed to advance DPS' mission. The department should make the following improvements no later than March 1, 2019:

- Better capture and analyze data on contracting and purchasing to regularly monitor the overall health of the entire contracting and purchasing process and identify broad trends or bottlenecks
- Develop target timeframes for each of the various stages of its contracting and purchasing process by type of procurement, including functions performed by division staff and functions performed by purchasing and contracting staff
- Evaluate requisitions that exceed these timelines, flag concerns, and report this information regularly to executive leadership and division staff



### **7.3 Direct DPS to maintain all contract-related documentation in a central location and post up-to-date contract information on its website.**

This recommendation would direct DPS to maintain all related contract documentation in a central location. Doing so would enable DPS to better centrally monitor its contracts and evaluate vendor performance, a healthy alternative to creating additional levels of review and approval within the divisions. Centralization would also protect against loss of documentation, which is particularly crucial for items such as expenditures and fund transfers. Keeping all documentation in a central repository would also better enable purchasing and contracting staff to locate items when under scrutiny from auditors or other outside oversight. This documentation includes

- contract number, description, total value, effective date, expiration date, and total number of renewal options;
- planning and solicitation documents, including statements of work and business cases;
- contract budget;
- contract communication;
- documentation of vendor meetings;
- expenditure reports; and
- contractor invoices.

To enhance transparency to the public and potential vendors, DPS would also be directed under this recommendation to keep appropriate contract information on its website updated, including posting all active contracts.

### **7.4 The department should reform its business case development process to include a cost-benefit analysis when deciding whether to outsource a major function.**

This recommendation would ensure DPS continues its new process of including a comparison and documentation of costs of efficiently providing the service internally to the cost of contracting with an outside vendor to perform the function as part of its business case process for potential outsourcing of a department function. Before transferring its responsibilities to an outside entity, the department should thoroughly study whether doing so would lower costs while also producing reliable, efficient, and technologically sophisticated service delivery.

## **Fiscal Implication**

Overall, the recommendations would improve internal operations and efficiency but their exact impact would depend on implementation. Implementing these enhancements, such as collecting and analyzing purchasing data and centralizing contract documentation, are a standard part of an agency's proper handling of its administrative duties, which DPS is already funded to perform.

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<sup>1</sup> State Auditor's Office, *Selected Contracts at the Department of Public Safety*, SAO Report No. 16-023 (Austin: State Auditor's Office, 2016), 1.

<sup>2</sup> State Auditor's Office, *State of Texas Compliance with Federal requirements for Selected Major Programs at the Department of Public Safety and the University of Texas Medical Branch at Galveston for the Fiscal Year Ended August 31*, Report No. 15-023 (Austin: State Auditor's Office, 2014), 11.

<sup>3</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 2261.253, Texas Government Code.

<sup>4</sup> State Auditor's Office, *Selected Contracts at the Department of Public Safety*, SAO Report No. 16-023 (Austin: State Auditor's Office, 2016), 1.

<sup>5</sup> Article IX, Section 17.10 (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).

# ISSUE 8

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

### Background

To protect the public and provide statewide law enforcement, the Legislature created the Department of Public Safety (DPS) in 1935 by combining the Texas Rangers and Texas Highway Patrol. Today, DPS seeks to fulfill its mission — to protect and serve Texas — through the following main functions: traffic and criminal law enforcement; major violent crime and public corruption investigations; border security operations; driver license and regulatory services; and emergency management.

In fiscal year 2017, DPS spent about \$1.4 billion, mostly from general revenue. That year, the agency had more than 9,800 employees at its Austin headquarters and field offices throughout the state. Of this total, almost 4,200 — or 43 percent — were commissioned law enforcement officers.

### Findings

#### **The department's statewide public safety and law enforcement activities continue to be needed.**

While many cities and counties perform functions similar to DPS, only a statewide organization can coordinate law enforcement and public safety activities across jurisdictional boundaries. Texas continues to need the department's main functions.

- **Traffic law enforcement.** As the population of Texas continues to increase along with the number of vehicles on the road, motor vehicle crashes injure and kill more motorists on Texas roadways with 3,735 deaths in fiscal year 2017. The department's state troopers provide high visibility patrols on the roadways to help reduce these preventable deaths, and they enforce all manner of highway safety laws on rural highways to protect motorists. In fiscal year 2017, troopers issued more than 519,000 citations and investigated more than 68,000 crashes. The department also ensures the safe operation of commercial vehicles, with troopers conducting more than 375,000 roadside inspections in 2017 and putting 66,103 vehicles out of service for serious safety violations.
- **Criminal law enforcement.** The department's efforts to prevent, detect, and deter criminal activity continue to be needed. While the overall major crime rate in Texas decreased 1.5 percent for 2016 compared to 2015 — the most recent data available — the violent crime rate actually increased 5.6 percent.<sup>1</sup> An agency with statewide jurisdiction is essential to plan and coordinate effective statewide law enforcement activities, including assisting local law enforcement agencies. The department investigates criminal organizations across the state involved in drug and human trafficking, fraud, violent crimes, and property crimes. In 2017, DPS arrested 309

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*DPS put more than 66,100 commercial vehicles out of service for serious safety violations in 2017.*

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members of criminal gangs and recovered more than 1,000 stolen vehicles. The department also collects and analyzes suspicious activity reports to provide federal, state, and local law enforcement agencies information on suspected criminal or terrorist activities.

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*Texas Rangers investigated 166 public corruption cases in FY 2017.*

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- **Major violent crime and public corruption investigations.** Texas Rangers have the training and expertise necessary to conduct major violent crime investigations as well as public corruption investigations, which involve law enforcement officers engaged in organized crime, and public integrity investigations, which involve crimes committed by public officials. In fiscal year 2017, Texas Rangers made 1,319 arrests and were actively engaged in 1,701 investigations of crimes such as murder, aggravated robbery, sexual assault, and officer-involved shootings. That same year, they investigated 166 public corruption cases and 62 public integrity cases. Also in fiscal year 2017, Texas Rangers cleared 19 unsolved cases by arrest, indictment, or conviction.
- **Border security operations.** The Legislature has directed the department to work with local, state, and federal law enforcement agencies to detect and prevent crime along the Texas-Mexico border. While DPS began this effort in 2008, border security operations increased significantly in June 2014 and the Legislature appropriated the department more than \$694 million in fiscal years 2018–2019 for these efforts. The department reports making more than 61,700 criminal arrests and seizing almost \$47 million in cash in the border region since that time.<sup>2</sup>
- **Driver license and regulatory services.** Through its driver license and regulatory programs, DPS provides a necessary function by ensuring only qualified Texans receive driver licenses, licenses to carry handguns, private security licenses, and other permits and registrations. In 2017, more than 23.5 million individuals in Texas had driver licenses or identification cards. Driver licenses now essentially serve as security documents, and states must safeguard these cards to comply with increasingly strict federal requirements. While Issues 3 and 5 question the need to regulate some of the programs under DPS oversight, many of the programs continue to need state oversight to protect the public. In 2017, 1.2 million individuals in Texas had licenses to carry handguns and more than 107,600 had private security guard licenses after passing criminal history background checks and meeting other requirements.
- **Emergency management.** The recent devastation caused by Hurricane Harvey illustrates the need for DPS' statewide emergency management efforts. The department helps local governments prepare for disasters, and coordinates the state's response when disasters occur. In fiscal year 2017, DPS reviewed more than 2,000 local and regional emergency management plans and coordinated the response to 4,616 emergency incidents. The department also helps administer federal emergency management grants in Texas. For Hurricane Harvey alone, DPS will distribute an estimated \$10.2 billion in grants to help Texas communities recover and rebuild.

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*In 2017, 1.2 million individuals in Texas had licenses to carry handguns.*

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**The department is the most appropriate agency to administer statewide public safety and law enforcement functions.**

While other state agencies perform some similar functions, none carries out the range of statewide law enforcement functions provided by DPS. For example, other state agencies with major law enforcement components, including the Texas Alcoholic Beverage Commission (TABC) and Texas Parks and Wildlife Department (TPWD), train and commission peace officers to enforce certain state laws. However, the missions of those agencies are much more limited than the department's — TABC regulates the alcoholic beverage industry and TPWD enforces wildlife laws. Likewise, the Texas Commission on Law Enforcement certifies and oversees training for peace officers but does not provide actual law enforcement services. No substantial benefit would be achieved by wholesale transfer of DPS' statewide law enforcement programs to other agencies.

Some of DPS' regulatory programs have a more direct tie to, and receive some benefit from, being housed at a law enforcement agency, including handgun licensing and private security regulation. Therefore wholesale transfer of the department's regulatory program would not benefit the state. However, the Texas Department of Licensing and Regulation (TDLR) successfully regulates a wide variety of occupations and has a proven track record of improving licensing and enforcement outcomes for transferred programs. Issue 6 examines whether TDLR would be a better oversight agency for DPS' motorcycle safety program.

While Texas' driver license program receives some benefit from being housed at DPS, the program continues its years-long struggle with customer service. The Legislature established the Texas Department of Motor Vehicles in 2009 to administer many of the state's motor vehicle regulations, and the agency has placed a large emphasis on customer service. Issue 1 addresses the potential benefits of transferring the driver license function from DPS to the Department of Motor Vehicles.

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

Each state recognizes that protecting its citizens is an essential and appropriate state-level function, although organizational structures vary widely. Some states, like Texas, have single agencies dedicated to public safety and law enforcement, while others use a combination of agencies to provide these services. For example, Florida houses its criminal investigations, counterterrorism, and crime lab functions at its Department of Law Enforcement while its Department of Highway Safety and Motor Vehicles houses highway patrol and driver license functions. Eight states, including Texas, house their driver license program at public safety agencies.

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*No other state agency carries out the range of statewide law enforcement functions as DPS.*

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*Transferring the driver license program to the Texas Department of Motor Vehicles has potential benefits.*

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*Commission member training needs to be updated.*

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**The department's statute does not reflect updated requirements for commission member training.**

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board recommendations (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

The department's statute does not reflect updated requirements for commission member training. The department's statute contains standard language requiring commission members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain a newer requirement that the agency create a training manual for all commission members or specify that the training must include a discussion of the scope of and limitations on the commission's rulemaking authority.

**Three of the department's required reports are not necessary.**

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.<sup>3</sup> The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend beyond the scope of the agency under review. Reporting requirements with deadlines or expiration dates are not included, nor are routine notifications or notices or posting requirements. Reports required by rider in the General Appropriations Act are also omitted under the presumption that the appropriations committees have vetted these requirements each biennium.

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*The metal recycling entities program is well established making two required reports unnecessary.*

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Appendix G lists the 27 reports state law requires DPS to produce, three of which Sunset staff found were no longer needed. Statute requires DPS to send two reports to the Legislature regarding metal recycling entities — one on the number and registration status of these entities and another on the cost of regulating these entities.<sup>4</sup> After 10 years, this regulatory program is well established and the Legislature no longer needs to monitor this information, though DPS could provide the information upon request. Also, since DPS has seized only one aircraft in the history of its aviation program, in 1988, and any future seizures would be included in an already required seized asset report, the separate report on seized and forfeited aircraft is duplicative and no longer needed.<sup>5</sup>

**The department continues to need its two statutory advisory committees.**

The Sunset Act directs the Sunset Commission to evaluate the need for an agency's advisory committees.<sup>6</sup> The department has two advisory committees



in statute, one for metal recycling entities, and one for the vehicle inspection program.<sup>7</sup> Statute requires the metal recycling committee to advise the department on matters related to its regulation of metal recycling entities. The vehicle inspection advisory committee must advise and make recommendations to both the department and the Texas Commission on Environmental Quality on vehicle inspection rules. As DPS makes regular use of both committees, they should be continued.

**The department should continue to implement state cybersecurity requirements and industry best practices.**

The 85th Legislature tasked the Sunset Commission with assessing cybersecurity practices for agencies under review.<sup>8</sup> The assessment of DPS' cybersecurity practices focused on identifying whether the department complied with state requirements and industry cybersecurity best practices. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of DPS' technical infrastructure. Sunset staff found no issues relating to DPS' cybersecurity practices that require action by the Sunset Commission or the Legislature, and communicated the results of this assessment directly to DPS.

## **Recommendations**

### ***Change in Statute***

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

While the other issues in this report show DPS has opportunities for improvement, the agency is clearly needed to provide statewide public safety services. This recommendation would continue the department for 12 years.

#### **8.2 Update the standard across-the-board requirement related to commission member training.**

This recommendation would require DPS to develop a training manual that each commission member attests to receiving annually and require existing commission member training to include information about the scope of, and limitations on, the commission's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

#### **8.3 Eliminate three of DPS' required reports.**

This recommendation would eliminate two reports on metal recycling entities — one on the number and registration status of these entities and another on the cost of regulating them — and a report on seized and forfeited aircraft. Sunset staff's analysis determined that the other 24 required reports provide useful information and should be continued.

#### 8.4 Continue the department's two statutory advisory committees.

This recommendation would continue the motor vehicle inspection and metal recycling entities advisory committees for 12 years.

### Fiscal Implication

Based on fiscal year 2018 appropriations, continuing DPS for 12 years would require about \$1.3 billion annually. Members of DPS' two advisory committees do not receive reimbursement for travel expenses so continuing the committees would have no fiscal impact.

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<sup>1</sup> Department of Public Safety, *Crime in Texas 2016* (Austin, Texas), p. 1.

<sup>2</sup> "Texas Border Security Monthly Brief – January 2018." Accessed April 5, 2018. This brief provides the most recent comprehensive data available. <http://www.dps.texas.gov/PublicInformation/borderSecStats.htm>.

<sup>3</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.012(a)(4), Texas Government Code.

<sup>4</sup> Sections 1956.014(c) and 1956.014(b), Texas Occupations Code.

<sup>5</sup> Article 59.11, Code of Criminal Procedure.

<sup>6</sup> Section 325.013, Texas Government Code.

<sup>7</sup> Section 1956.017, Texas Occupations Code and Section 548.006, Texas Transportation Code.

<sup>8</sup> Section 325.011(14), Texas Government Code; Chapter 683 (H.B. 8), Acts of the 85th Texas Legislature, Regular Session, 2017.

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## APPENDICES



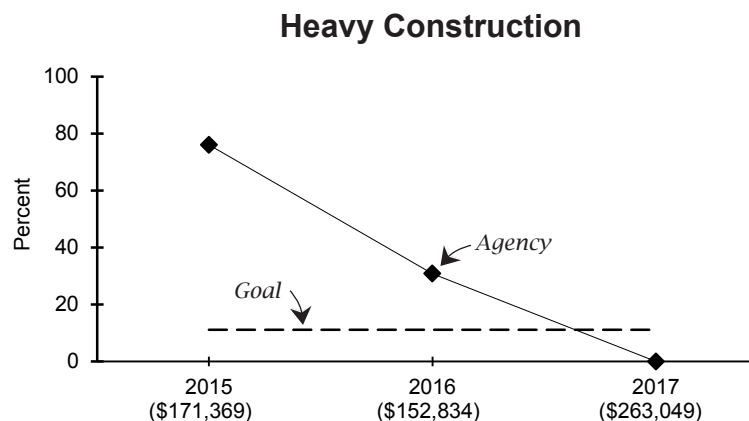
# APPENDIX A

## ***Historically Underutilized Businesses Statistics 2015 to 2017***

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

The following material shows trend information for the Department of Public Safety's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

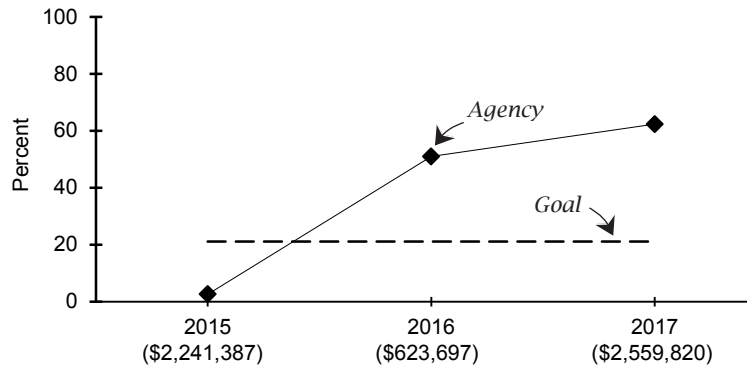
The department's purchases consistently fell short of statewide goals in its two largest spending categories — other services and commodities. The agency met other HUB-related requirements, including designating a HUB coordinator, establishing a HUB policy, and developing a HUB mentor-protégé program.



The department exceeded the state's purchasing goal for heavy construction in fiscal years 2015 and 2016, but fell below the goal for fiscal year 2017.

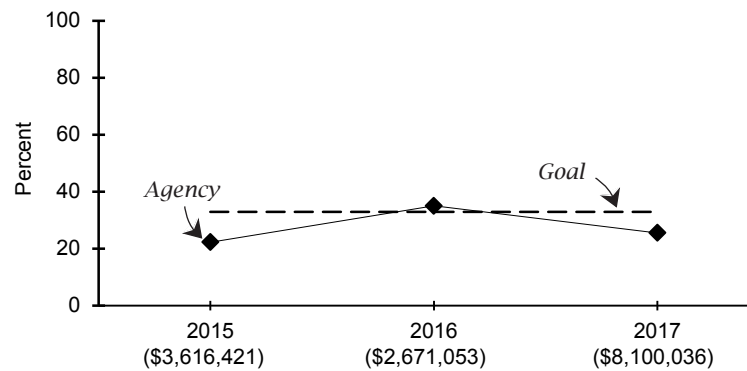
## Appendix A

### Building Construction



The department fell below the purchasing goal for building construction for fiscal year 2015 but significantly exceeded the goal in fiscal years 2016 and 2017.

### Special Trade

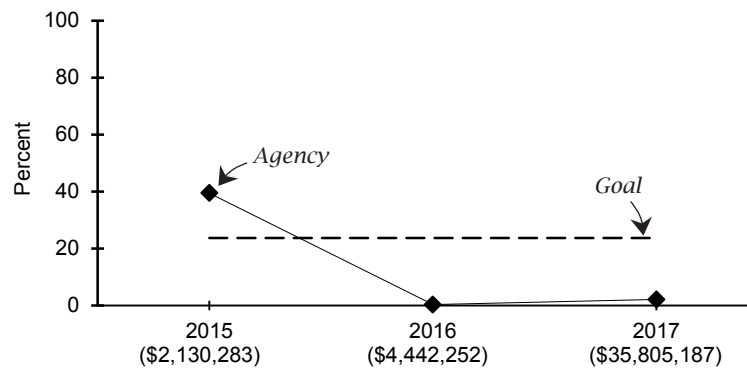


The department fell below the state's purchasing goal for special trade in fiscal years 2015 and 2017 but exceeded the goal in fiscal year 2016.



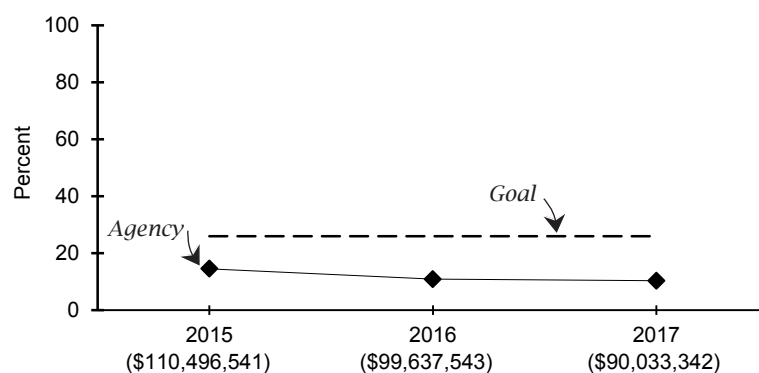
## Appendix A

### Professional Services



In fiscal year 2015, the department exceeded the state's purchasing goal for professional services, but fell significantly below the goal in fiscal years 2016 and 2017. The majority of the department's spending in this category was for contracts with outside firms to manage grants awarded by the Federal Emergency Management Agency. The department reports difficulty meeting the goal in this spending category because relatively few firms specialize in this work, with even fewer being HUBs.

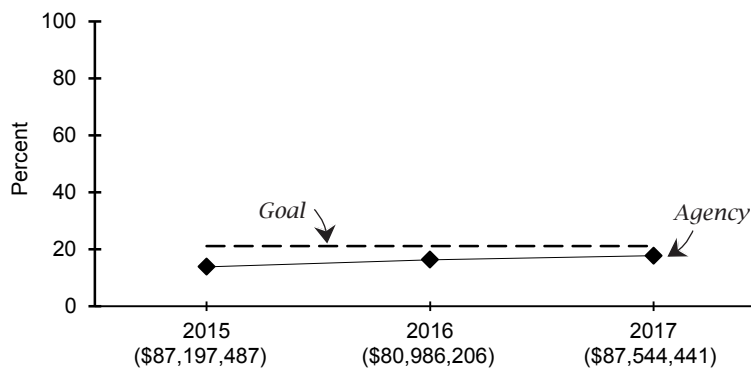
### Other Services



The department fell below the purchasing goal for other services, the department's largest spending category, for each of the last three fiscal years. The department cites the frequent use of credit cards to purchase fuel and tires for patrol cars at gas stations and tire shops, most of which are not HUBs, as a reason for failing to meet the goal in this spending category.

## Appendix A

### Commodities



The department fell below the purchasing goal for commodities in each of the last three fiscal years. The department reports difficulty meeting the goal for this spending category in part because it makes many commodities purchases below \$5,000. The state does not require such purchases to be competitively bid.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

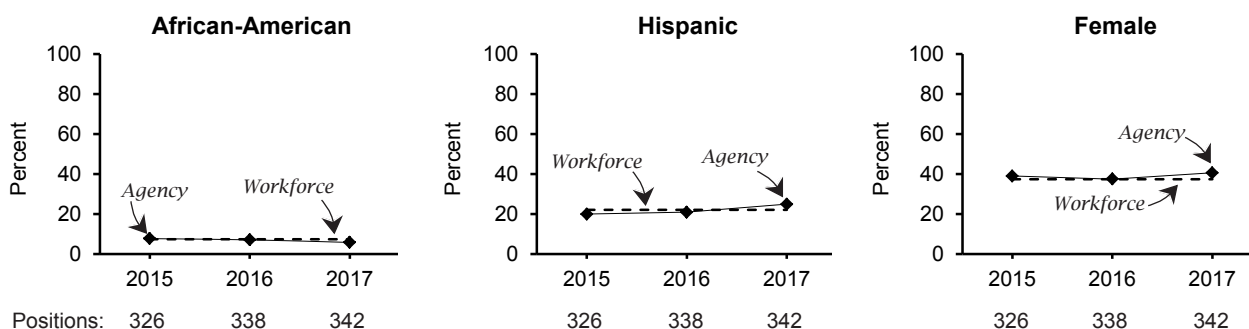
<sup>2</sup> Chapter 2161, Texas Government Code.

# APPENDIX B

## ***Equal Employment Opportunity Statistics 2015 to 2017***

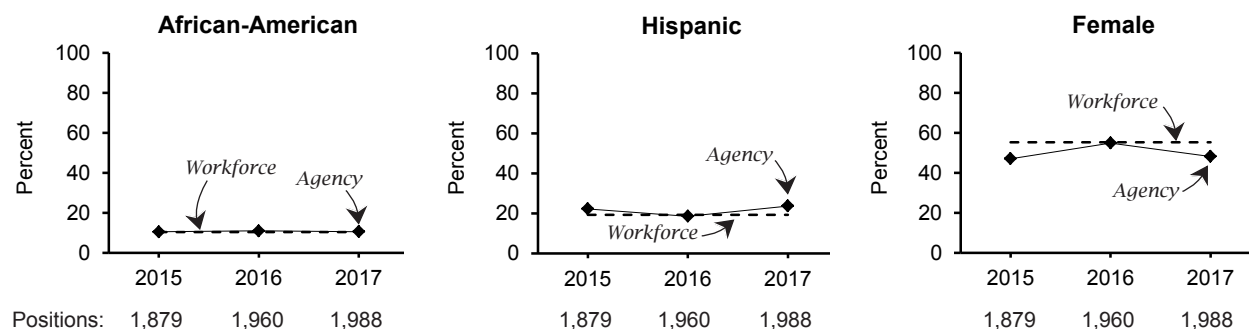
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Department of Public Safety.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The department met or exceeded civilian workforce percentages for minorities and females in some job categories, but fell short in others, particularly for the skilled craft category in general and among African-Americans and females in the technical and protective services categories.

### **Administration**



The department met or exceeded the civilian workforce percentages for females in each of the last three fiscal years, African-Americans in fiscal year 2015, and Hispanics in 2017. The department fell just short of the percentages for Hispanics in fiscal years 2015 and 2016 and African-Americans in fiscal years 2016 and 2017.

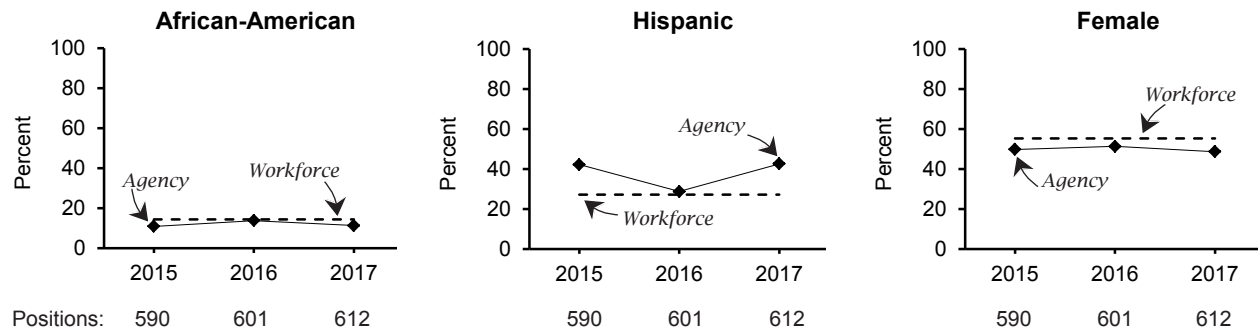
### **Professional**



The department met the percentages for African-Americans in each of the last three fiscal years and met the percentages for Hispanics in fiscal years 2015 and 2017, but fell short of the percentages for females in all three years.

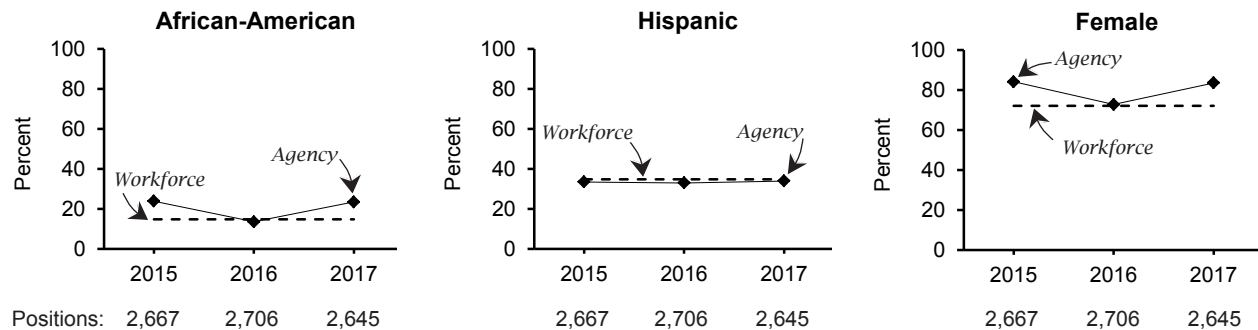
## Appendix B

### Technical



The department fell short of the percentages for African-Americans and females in each of the last three fiscal years, but exceeded the percentages for Hispanics over the same time period.

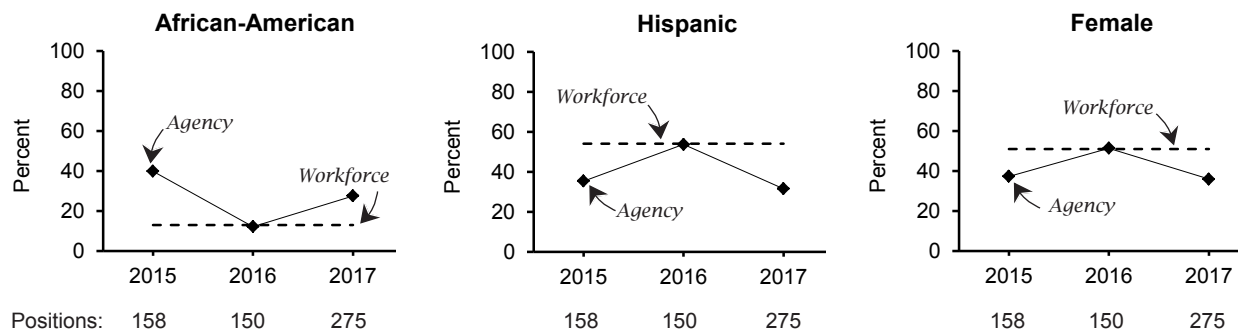
### Administrative Support



The department met or exceeded the percentages for females in each of the last three fiscal years, but fell just short of the percentages for African-Americans in fiscal year 2016 and for Hispanics in all three years.

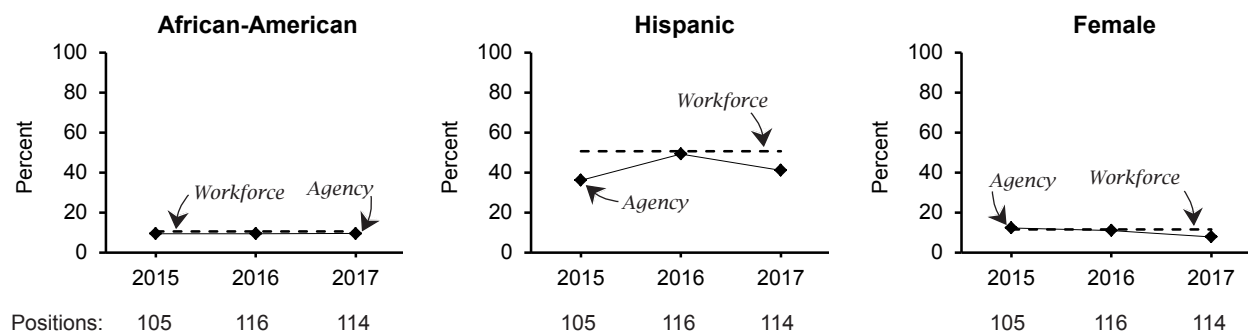
## Appendix B

### Service/Maintenance



The department exceeded the percentages for African-Americans in 2015 and 2017 and met the percentages for Hispanics and females in fiscal year 2016, but fell short of the percentages for Hispanics and females in fiscal years 2015 and 2017.

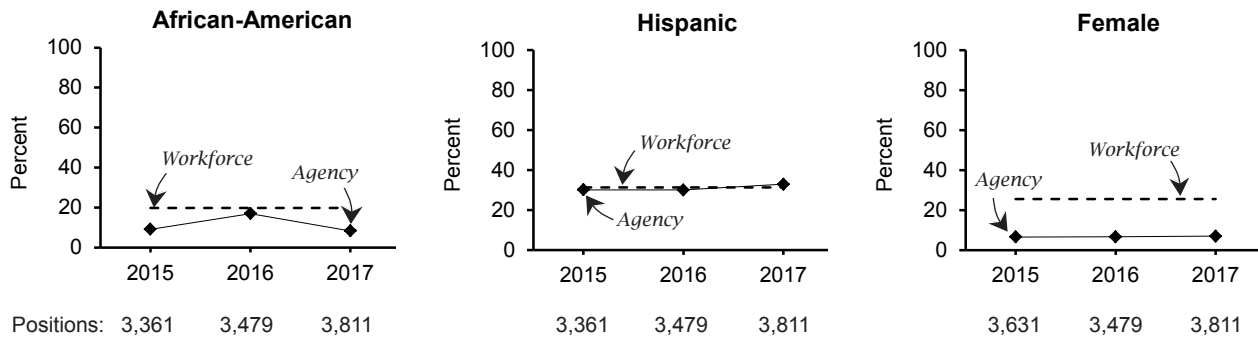
### Skilled Craft



The department fell short of the percentages for African-Americans and Hispanics in each of the last three fiscal years. The department met the percentages for females in fiscal year 2015 but fell short the next two years.

## Appendix B

### Protective Services



The department fell short of the percentages for protective services in all categories for all three years except Hispanics in 2017. Protective services is the single largest category of DPS staff.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

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

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.



## Texas Border Security Levels

Department of Public Safety Staff Report  
Appendix C



# APPENDIX D

## Department of Public Safety Regulatory Program Data – FY 2017

The following information presents a summary of licensing and enforcement data provided by the Department of Public Safety for fiscal year 2017. The information does not provide the level of detail discussed in Issue 4 and notations are made where reports of numbers conflicted.

	<i>Licensees</i>	<i>Complaints<sup>1</sup></i>	<i>Investigations</i>	<i>Average Case Resolution Time</i>	<i>Enforcement Actions<sup>2</sup></i>	<i>Criminal Arrests<sup>3</sup></i>
Capitol Access Pass	827	0	0	n/a	0	0
Compassionate Use Program <sup>4</sup>	3	n/a	n/a	n/a	n/a	n/a
Emission Repair Facilities	363	0	0	n/a	0	0
Ignition Interlock Device Vendors	434	0	0	n/a	0	0
License to Carry a Handgun	1,212,179	40	48	1 month	4,038	1
Metal Recycling Entities	1,160	15	67 <sup>5</sup>	1 month	142	25
Peyote Distributors	4	0	0	n/a	0	0
PCLA <sup>6</sup>	1,381	0	0	n/a	0	0
Private Security	141,207	490	225 <sup>5</sup>	2 months	1,354	37
Salvage Yards	n/a	32	44 <sup>5</sup>	1 month	n/a	1
Vehicle Inspection	55,711	436	86 <sup>5</sup>	5 months	4,937	18
<b>TOTAL</b>	<b>1,418,269</b>	<b>1,013</b>	<b>470</b>	<b>2 months</b>	<b>10,471</b>	<b>82</b>

<sup>1</sup> Reported in the Regulatory Crimes Services complaint intake database.

<sup>2</sup> Includes license denials and revocations for criminal history.

<sup>3</sup> Reported in the Criminal Investigations Division regulatory investigations tracking database.

<sup>4</sup> The Compassionate Use Program was not fully operational until fiscal year 2018.

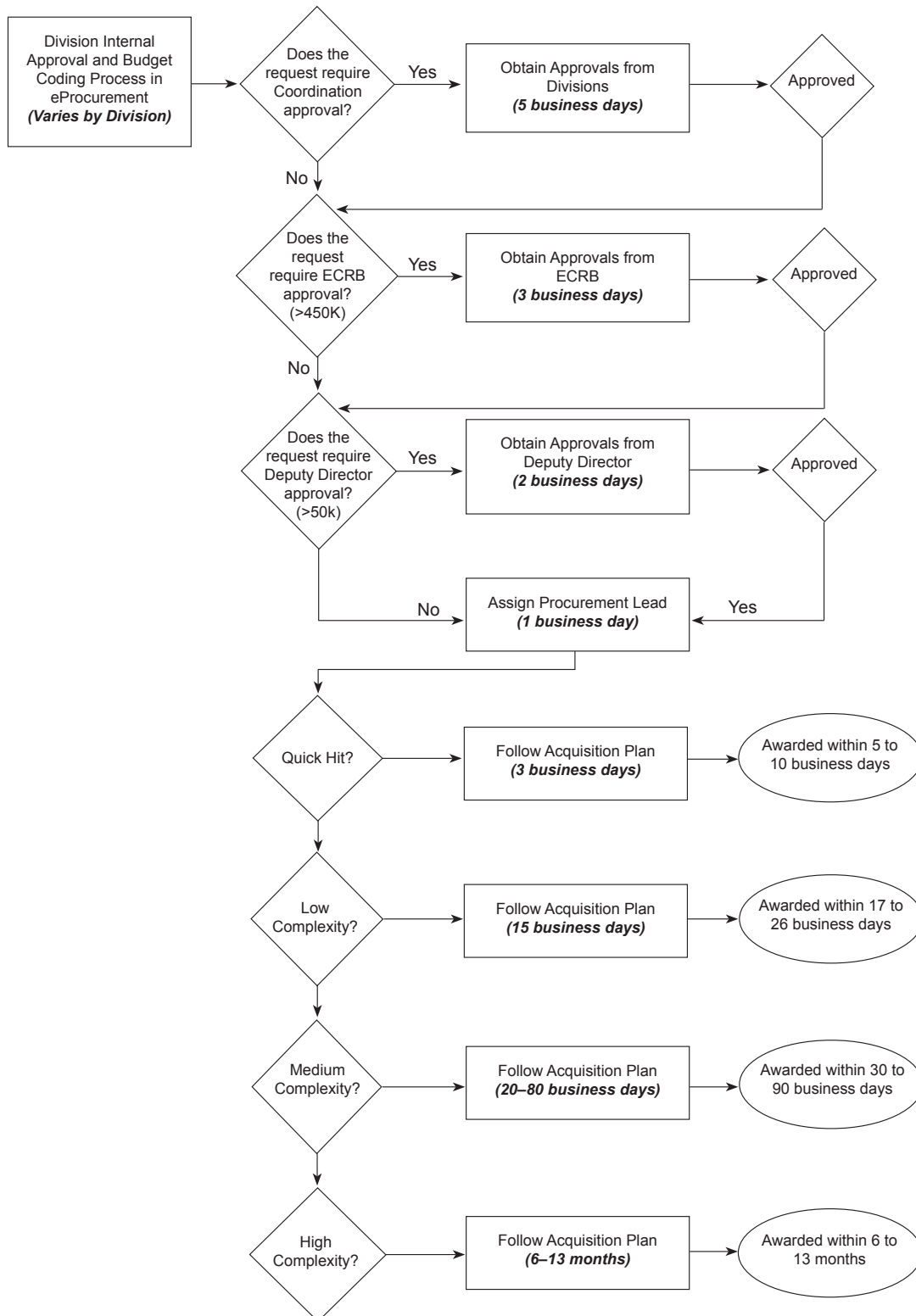
<sup>5</sup> Reported numbers conflict; data tracking investigations completed by the Criminal Investigations Division is shown.

<sup>6</sup> Precursor Chemical and Laboratory Apparatus Program.



# APPENDIX E

## Procurement Flow Chart







# APPENDIX F

## ***Executive Contract Review Board vs. Contract Review Board***

<b>Composition of the Executive Contract Review Board</b>	<b>Composition of the Contract Review Board</b>
<ul style="list-style-type: none"> <li>• Director of Administration Division, Chair</li> <li>• Representative from the Office of Finance</li> <li>• Representative from the Office of General Counsel</li> </ul>	<ul style="list-style-type: none"> <li>• Director of Administration Division, Chair (non-voting)</li> <li>• Representative from the Office of Finance</li> <li>• Representative from the Office of General Counsel</li> <li>• Representative from Information Technology</li> <li>• Representative from one law enforcement division (rotating member)</li> <li>• Representative from one services division (rotating member)</li> <li>• Member of the Public Safety Commission, as designated by the commission</li> </ul>
<b>Items Requiring Review by the Executive Contract Review Board</b>	<b>Items Requiring Review by the Contract Review Board</b>
<ul style="list-style-type: none"> <li>• Any new request to procure goods or services valued at \$500,000 or more</li> <li>• Any request to renew goods or services valued at \$500,000 or more</li> <li>• Any new request to enter into an agreement with an associated dollar amount of \$500,000 or more               <ul style="list-style-type: none"> <li>– Pass-Through</li> <li>– Funds Generating</li> <li>– Self-Funded</li> </ul> </li> <li>• All new requests relating to staff augmentation services of any value.</li> <li>• All change requests relating to staff augmentation services of any value</li> </ul>	<ul style="list-style-type: none"> <li>• New contracts valued at \$1 million or more, including all available renewal options</li> <li>• Contract amendments (excluding available, previously-reviewed renewal options) valued at \$100,000 or more that increase the value of the original contracts by 50 percent or more</li> <li>• Contract amendments (excluding available, previously reviewed renewal options) valued at \$500,000 or more</li> </ul>



# APPENDIX G

## *Department of Public Safety Reporting Requirements*

<b>Report Title</b>	<b>Legal Authority</b>	<b>Description</b>	<b>Recipient</b>	<b>Sunset Evaluation</b>
1. Arrest and Disposition Information Submitted by Local Jurisdictions	Article 60.21(b)(2), Code of Criminal Procedure	Requires DPS to produce an annual report detailing the level of reporting by local jurisdictions, including arrest and disposition information and whether such jurisdictions report timely and complete reports.	Governor, Lieutenant Governor, standing committees with jurisdiction over criminal justice and DPS, Legislative Budget Board, State Auditor	Continue
2. Arrests Without Final Court Disposition	Article 60.21(b)(4), Code of Criminal Procedure	Requires DPS to report monthly a list of each arrest by a local jurisdiction for which there is no corresponding final court disposition.	DPS website	Continue
3. Child Safety Check Alert List	Section 261.3025, Texas Family Code	Requires DPS to annually report the number of law enforcement officers who completed training for school district officers and school resource officers, the number of children and families placed on the child safety check alert list, and the number of each that have been located.	Standing committees with jurisdiction over child protective services	Continue
4. Collision Rate Statistics	Section 521.206, Texas Transportation Code	Requires DPS to annually report data collected regarding collisions of students taught by public schools, driver education schools, and other entities, including severity the collisions.	DPS website	Continue
5. Costs for Registration of Metal Recycling Entities Not Covered by Fees	Section 1956.014(b), Texas Occupations Code	Requires DPS to annually report any costs associated with administering the registration program not covered by fees.	Legislature	Eliminate — See Recommendation 8.3
6. Criminal Street Gangs (Gang Threat Assessment)	Section 421.082(e), Texas Government Code	Requires the Texas Fusion Center, housed at DPS, to produce an annual report assessing the threat posed statewide by criminal street gangs.	Governor, Legislature	Continue

## ***Appendix G***

<b>Report Title</b>	<b>Legal Authority</b>	<b>Description</b>	<b>Recipient</b>	<b>Sunset Evaluation</b>
7. Driver Record Monitoring Pilot Program	Section 521.062(m), Texas Transportation Code	Requires DPS to produce a one-time report following pilot program completion in June 2018 that analyzes the scope, effectiveness, and cost benefits of the Driver Record Monitoring pilot program.	Lieutenant Governor, Speaker of the House, Legislature	Continue
8. Employment-Related Grievances and Appeals of Disciplinary Actions Within the Department	Section 411.0072(d), Texas Government Code	Requires DPS to annually report on the agency's use of the employee-related grievance process.	Public Safety Commission, Legislature	Continue
9. Expenditures for Pen Registers and Similar Equipment	Article 18.21(m), Code of Criminal Procedure	Requires DPS to annually report on expenditures reported by certain law enforcement agencies for the purchase and maintenance of a pen register and similar equipment. Pen registers are electronic devices that record all numbers called from a particular telephone line.	DPS website	Continue
10. Expenditures Related to Detection, Intercepted and Use of Wire, Oral or Electronic Communication	Article 18.20, Section 15(c), Code of Criminal Procedure	Requires DPS to produce an annual report of all intercepts reported to DPS from judges and prosecuting attorneys, the number of DPS staff authorized to possess, install, or operate the devices, the number of DPS staff who participated or engaged in the seizure of intercepts, and the total cost to DPS related to intercepts for the preceding year.	Governor, Lieutenant Governor, Speaker of the House, Senate Jurisprudence Committee Chair, House Criminal Jurisprudence Committee Chair	Continue
11. Handgun Incidents	Section 411.047(b), Texas Government Code	Requires DPS to annually report on convictions by handgun license holders compared to statewide convictions.	DPS website	Continue
12. Handgun Licenses	Section 411.193, Texas Government Code	Requires DPS to produce a report of the number of handgun licenses issued, denied, revoked, or suspended during the preceding month, listed by age, gender, race, and zip code of the applicant or license holder.	DPS website	Continue

## Appendix G

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
13. Homeland Security Council – Annual Report	Section 421.026, Texas Government Code	Requires DPS to produce an annual report on the council's progress developing and coordinating a statewide critical infrastructure protection strategy, status and funding of relevant state programs, and recommendations.	Governor	Continue
14. Information on Persons Licensed by Certain Agencies	Article 60.061, Code of Criminal Procedure	Requires DPS to report to an appropriate licensing agency, at least quarterly, the name of any person found to have a record of conviction, except deferred adjudication.	Appropriate licensing agency	Continue
15. Justification of Disposition of Seized and Forfeited Assets	Section 411.0131(c), Texas Government Code	Requires DPS to produce a quarterly report detailing and justifying dispositions of seized and forfeited assets that differ from the planned dispositions and were used for a purpose not considered a priority.	Governor, Lieutenant Governor, Speaker of the House	Continue
16. Needs Assessment for Enforcement of Commercial Motor Vehicle Rules	Section 411.0099(b), Texas Government Code	Requires DPS to report each biennium a needs assessment for the enforcement of commercial motor vehicle rules.	House Appropriations, Senate Finance, Texas Transportation Commission	Continue
17. Operations and Expenditures	Section 411.006, Texas Government Code	Requires DPS to produce detailed reports quarterly, annually, and biennially on the operation of the agency, including statements of its expenditures.	Public Safety Commission, Governor	Continue
18. Petitions and Orders for Nondisclosure of Criminal History Record Information	Section 411.077(b), Texas Government Code	Requires DPS to report each even-numbered year the number of petitions for nondisclosure in the two previous years, actions taken by the department, costs incurred, and the number of persons who are the subject of a nondisclosure order and who subsequently became the subject of criminal charges committed after the order was issued.	Legislature	Continue
19. Public Safety Commission – Biennial Report	Section 411.004(5), Texas Government Code	Requires DPS to produce a biennial report of its work, including the commission's and director's recommendations.	Governor, Legislature	Continue

## ***Appendix G***

<b>Report Title</b>	<b>Legal Authority</b>	<b>Description</b>	<b>Recipient</b>	<b>Sunset Evaluation</b>
20. Registration of Metal Recycling Entities	Section 1956.014(c), Texas Occupations Code	Requires DPS to annually report the number of recycling entities that have complied with the registration requirements and information on recycling entities submitted to DPS by locals.	Legislature	Eliminate — See Recommendation 8.3
21. Seized and Forfeited Aircraft	Article 59.11, Code of Criminal Procedure	Requires DPS to report on any seized or forfeited aircraft on a quarterly basis.	Texas Department of Transportation	Eliminate — See Recommendation 8.3
22. Seized and Forfeited Assets	Section 411.0131(b), Texas Government Code	Requires DPS to produce an annual report on seized and forfeited assets.	Governor, Lieutenant Governor, Speaker of the House	Continue
23. Statistics on Prosecution of Offenses for Operating a Motor Vehicle While Intoxicated	Section 411.049(e), Texas Government Code	Requires DPS to produce an annual report of statistical information on the prosecution of offenses relating to the operation of a motor vehicle while intoxicated.	Legislature	Continue
24. Summary and Analysis of Hate Crime	Section 411.046(b), Texas Government Code	Requires DPS to produce an annual report summarizing and analyzing hate crime reports received from local law enforcement agencies.	Governor, Legislature	Continue
25. Texas Disaster Contingency Fund	Section 418.073(d), Texas Government Code	Requires DPS to annually report expenditures from the fund, overall status of the fund, and any changes to rules or procedures.	Lieutenant Governor, Speaker of the House	Continue
26. Texas Fusion Center Policy Council – Annual Report	Section 421.086, Texas Government Code	Requires DPS to annually report on the council's progress in developing and coordinating the statewide fusion effort and intelligence network, progress made by fusion centers, and summary of fusion center audits or reviews.	Governor, Legislature	Continue
27. Unclaimed Property Data	Section 411.0111, Texas Government Code	Requires DPS to provide driver license and identification card data every five years to assist the Comptroller in identifying persons entitled to unclaimed property.	Comptroller of Public Accounts	Continue

# APPENDIX H

## ***Staff Review Activities***

During the review of the Department of Public Safety (DPS), Sunset staff engaged in the following activities, most of which are standard to all sunset reviews. Sunset staff worked extensively with department personnel; attended Public Safety Commission and Private Security Board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed department documents and reports, federal and state statutes, legislative and congressional reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

Sunset staff also collaborated with Texas Legislative Council staff on collecting, processing, and analyzing DPS' quantitative data on border security and vehicle inspections. Any conclusions drawn from this analysis were strictly those of Sunset staff.

In addition, Sunset staff performed the following legislative activities unique to DPS:

- Interviewed members of the Public Safety Commission and Private Security Board
- Toured and interviewed staff at the DPS offices in Houston, Edinburg, and Tyler, including crime labs, and visited with representatives from the different divisions in each of those offices. Also visited driver license offices in Edinburg, Houston-Gessner, New Braunfels, Spring, and Tyler
- Toured and interviewed staff at the DPS satellite automotive repair facility in Edinburg
- Toured and interviewed staff at the U.S. Border Patrol facility and Joint Operations Intelligence Center in Edinburg
- Toured and interviewed staff at the DPS commercial vehicle inspection facility in Pharr
- Toured and interviewed staff at the Texas Anti-gang Center in Houston
- Toured and interviewed staff at two licensed compassionate use facilities
- Attended meeting of driver license division regional managers in New Braunfels
- Toured and interviewed staff at DPS' driver license production facility and call center, training academy, data center, Border Security Operations Center, and State Operations Center at Austin headquarters
- Toured and interviewed staff at DPS' aviation operations at Austin-Bergstrom International Airport
- Accompanied a Texas state trooper on patrol and observed traffic stops
- Interviewed staff from various government agencies, including the Comptroller of Public Accounts, the State Office of Administrative Hearings, the Texas Department of Licensing and Regulation, the Texas Department of Motor Vehicles, the Texas Department of Transportation, Texas Department of State Health Services, the University of Texas' Institute for Organizational Excellence, U.S. Border Patrol, and the U.S. Drug Enforcement Administration





# Sunset Staff Review of the *Department of Public Safety*

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