

TEXAS DEPARTMENT OF PUBLIC SAFETY

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May 10, 2018

Honorable Members of the Texas Sunset Advisory Commission:

On behalf of the Public Safety Commission and the Department of Public Safety, please find attached our formal responses to the issues presented in the Sunset Staff Report dated April 19, 2018.

Respectfully,

A handwritten signature in blue ink that reads 'Steven P. Mach'.

Steven P. Mach
Chairman
Public Safety Commission

A handwritten signature in blue ink that reads 'Steven C. McCraw'.

Steven C. McCraw
Director
Texas Department of Public Safety

Issue 1: **DPS Has Not Maximized Its Resources to Adequately Improve Driver License Customer Service.**

Issue Response:

DPS recognizes that Driver License (DL) capacity is inadequate based on current demand. DPS has utilized the resources provided to the department by the Legislature to the best of our ability given the capacity deficit from which the department started in 2011, when significant Legislative investments began. In addition to that original deficit, the current capacity shortfall is impacted by several factors, including increases in federal requirements and the ever-increasing demand on DL services due to Texas' significant and continuous population growth, which has outpaced the state's resource infusion.

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.

Response

DPS supports this recommendation. DPS has a plan to close the 87 most inefficient offices and is prepared to close them as directed. The majority of DL customers only need to visit a DL office once every 12 years. DPS is able to offer a plan where 99.88 percent of customers reside within 30-50 miles of a DL office. For the customers who are more than 50 miles from a DL office, DPS will continue to encourage partnerships with counties and municipalities to enter into agreements with DPS to allow a county/municipal employee to provide renewal and replacement driver licenses, identification cards and election identification cards. DPS will also explore options for using a mobile unit to provide services to those areas on a scheduled basis.

To be successful in implementing this plan, the department will require the support of state and local officials, who, as representatives for their constituents, take an active interest when services are removed or diminished in their city, county or district.

The proposal for closure is based on the following factors:

1. The office conducts fewer than 5,000 transactions annually;

2. The office is staffed by a single customer service representative (CSR) and/or the office is staffed by a single CSR who must travel from another duty station.
 - a. Offices with only one CSR must be considered for closure and consolidation, because services are not available when the CSR takes leave, whether sick or otherwise; when the CSR is on breaks or at lunch; or when the CSR is already assisting a customer. For example, when the CSR at a one-person office is conducting a drive test, there is no capacity to serve any other customer. All of these factors make it difficult for customers to know when the office is available.
 - b. In addition, because offices with only one CSR have no on-site supervision, there is also a higher risk of fraud and errors than offices with on-site leadership. For future requests for new offices, if a small office is needed, DPS recommends that each DL office have a minimum of 5 FTEs (4 CSRs and 1 lead or supervisor). This ensures there is capacity at the office for customers, even when an employee is on leave or assisting customers with drive tests. However, due to current staffing and funding constraints, the plan for consolidation based on this Sunset staff recommendation requires each office to have at least 3 CSRs.
3. The office is outdated with safety issues.
 - a. Some proposed closures are recommended due to safety and capacity issues. For example, the current Denton office is a state-owned facility with five workstations in a building that was constructed in 1978. The lack of space in the facility causes a fire code issue, requiring customers to wait outside year round in every type of weather condition. There is inadequate parking with no room for expansion. Customers routinely park on the shoulder of North Loop 288, creating hazardous conditions for themselves and traffic on the highway. However, in October 2017, a DL Mega Center was opened in Carrollton approximately 24 miles away. It would better serve the customers of Denton County to collapse the current Denton office into the Carrollton Mega Center rather than keeping the outgrown Denton office open.
4. The county has sent notice that the space must be vacated.

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.

Response

DPS will work with DMV on opportunities and challenges for the two programs to be merged. Wherever the driver license program resides, it will need increased funding to provide adequate service.

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.

Response

The Driver License Program has been underfunded and understaffed for decades. Due to the increasing growth of the population in Texas, there will be a continual need to provide additional driver license funding to expand both the infrastructure and the number of employees in the program.

Issue 2: DPS Should Better Measure and Report Its Border Security Performance to Allow the State to Determine the Return on Its Significant Investment.

Issue Response:

With respect to the State of Texas' Border Security initiative, DPS has collected and reported all required performance-related data as designated by State Leadership, the Legislature and the Legislative Budget Board - and the department will continue to do so. What those performance-related data are and how they are reported, and whether or not those measures can be utilized to effectively determine Return on Investment, are also the role of the Legislature and State Leadership. The State's Border Security initiative is a model of unified command operations, as well as unified reporting of operations and incidents. It is a complex operation that daily brings together information from more than 170 individual agencies in 53 counties. Such intricate reporting requires more than rudimentary statistical review. It appears DPS was unable to effectively educate and explain that fact to Sunset staff. Therefore, included in DPS' letter to the Sunset Commission members is a more detailed response to the background and findings by Sunset staff.

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.

Response

DPS supports the recommendation to codify these requirements. DPS has been reporting statewide crime statistics since 1976 and data specific to the Border Security initiative since 2014. The department will continue tracking and public reporting of crime statistics.

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.

Response

Absent the ideal scenario of a single statewide system, DPS has a process in place and will continue to collect and maintain output data related to the State's Border Security initiative.

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.

Response

DPS will continue its reporting to the Legislature and State Leadership as directed by those respective entities.

Issue 3: Overregulation and Unclear Authority Hamper DPS' Private Security Program.

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.

Response

DPS agrees with the recommendation.

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. 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.

Response

DPS generally agrees with this recommendation, but it should be noted this change could allow an individual to own a company from which they would be prohibited from working.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS is unable to agree or disagree with the recommendation at this time. It is unclear how the elimination of the affiliation with a company is intended to affect the individual licensure requirements. For instance, it is unclear whether an individual would be subject to the same requirements currently imposed on companies, including the higher application and renewal fees, the requirement to renew annually and the requirement to obtain commercial liability insurance; or whether the individual would only be subject to the requirements currently applicable to individual registrants, with the exception of the requirement to be employed by a licensed company. If the latter is intended, it is unclear when an individual would be required to obtain a company license.

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.

Response

DPS is unable to agree or disagree with the recommendation at this time. It is unclear how the elimination

of the affiliation with a company is intended to affect the individual licensure requirements. For instance, it is unclear whether an individual would be subject to the same requirements currently imposed on companies, including the higher application and renewal fees, the requirement to renew annually and the requirement to obtain commercial liability insurance; or whether the individual would only be subject to the requirements currently applicable to individual registrants, with the exception of the requirement to be employed by a licensed company. If the latter is intended, it is unclear when an individual would be required to obtain a company license.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS agrees with the recommendation to deregulate telematics service providers. However, to clarify, the Private Security Act provides an exemption from the statute for telematics companies that pay the annual fee. Repeal of this provision would result in such providers being regulated as investigations companies. Deregulation would require not only the repeal of the related provisions but the addition of an express exemption.

***Issue 4:* The Department's Nonstandard Regulatory Processes Compromise Effective and Fair Operations.**

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.

Response

DPS agrees with the recommendation and has posted this information on the department's website. DPS will continue to work to increase the data formats available on the website to expand utility for the end user.

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.

Response

DPS supports this recommendation.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS generally agrees with the recommendation, as well as the need for more explicit procedures governing the review of mitigating and aggravating factors in the context of criminal history-based

licensing actions. However, with respect to Private Security specifically, the department would point out that the Act mandates immediate action on DPS' part upon receipt of notice that a person has been charged with or convicted of a disqualifying offense (§1702.364). The immediacy of this action is necessitated in part by the authority granted to applicants to perform regulated services prior to licensure, while their application is pending. Ensuring the public is not put at risk by security personnel with disqualifying criminal records is central to the policy underlying the Private Security Act.

The public safety concerns underlying Chapter 1702 were explained by the Sunset Advisory Commission in its report on the Private Security Board in 1998:

By establishing minimum licensing requirements that exclude persons with criminal histories, the Legislature ... has expressed an interest in minimizing the risk that persons working in the private investigations and private security industry pose to personal property and public safety.

Individuals working in the security services industry pose a threat not only to consumers of these services, but also the welfare of the general public. The very nature of these professions allows individuals to have easy access to private property and sensitive personal information. These individuals guard or monitor offices, banks, homes, parking lots, and neighborhoods. Ensuring that individuals who have a history of breaking the law are not allowed to work in these professions would promote public safety.

SUNSET ADVISORY COMMISSION REPORT, TEXAS BOARD OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES, 1998, at 39 (emphasis added). For these reasons, "the public has a strong interest in seeing that the Board use this criminal history information to disqualify persons from working in this industry." Id.

In Occupations Code Section 1702.364, the Legislature provided a mechanism by which the department could act swiftly and efficiently in response to criminal activity on the part of applicants and licensees. Substantial case-by-case review of secondary factors prior to taking summary action would appear to be in conflict with the Section 1702.364 mandate.

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.

Response

DPS has concerns with this recommendation and points out that the permanent disqualifiers relate to sexually violent offenses, the "3g" offenses listed in CCP 42.12 and the offense of burglary of a habitation. DPS would respectfully suggest that permanently disqualifying such offenders from performing private security services is an appropriate exercise of rule-making discretion and is authorized under Section 53.021(a)(3) of Chapter 53.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS agrees with the recommendation.

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.

Response

As a general matter, the department does not lack authority to conduct informal settlement conferences, and many cases arising from complaints or investigations are settled without or in conjunction with a hearing. DPS agrees generally with the recommendation and can adopt rules expressly articulating the process.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS agrees with the recommendation.

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.

Response

DPS agrees with the recommendation and has already initiated the move to a risk-based audit process.

Issue 5: Three DPS Regulatory Programs Are Not Necessary to Protect the Public.

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. 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.

Response

DPS agrees with the recommendation.

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.

Response

DPS agrees with the recommendation.

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.

Response

Most national highway safety organizations and associations identify IID vendor regulation as a best practice. DPS believes this recommendation requires more study of the department's ability to provide effective oversight, as suggested by Sunset staff, absent statutory authority requiring it.

Issue 6: DPS' Management of the Motorcycle Safety Program Wastes State Resources.

Issue Response:

DPS believes it has operated the Motorcycle Safety Program and utilized appropriated funding in a manner consistent with the direction of the Legislature. Through the General Appropriations Act, the Legislature directed DPS to purchase training motorcycles to administrator this program.

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.

Response

DPS supports this recommendation.

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.

Response

DPS supports the recommendation

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.

Response

While DPS supports this recommendation, it is important to note that the Legislature directed DPS through the General Appropriations Act to purchase training motorcycles to administer this program.

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.

Response

DPS supports the recommendation.

Issue 7: DPS Needs Enhanced Accountability and Efficiencies in Contracting and Purchasing

Issue Response:

DPS recognizes the significant responsibility placed upon the agency to be good stewards of public funding appropriated by the Legislature and readily understands the need to ensure effective accountability. DPS also recognizes that accountability cannot be sacrificed to expediency. As such, DPS agrees that it should and does continually work to increase both accountability and efficiency. Due the complexities of this issue area, DPS has included a more detailed response to the Sunset staff's background and findings in its letter to the Sunset Commission members.

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.

Response

DPS agrees with the recommendation. As described to Sunset staff during their review process, DPS is in the process of updating its Procurement and Contracting Services (P&CS) and Office of General Counsel (OGC) review process to use the DPS risk assessment tool as a criteria for determining required levels of

OGC review. DPS believes its reviews, approval and accountability for procurement and contracting within the current system are appropriately based on value and complexity. Through ongoing process improvement, DPS will continue to reassess the tool and criteria on a continual basis. Also as described to Sunset staff, the Public Safety Commission (PSC) is engaged throughout the life of a major contract, both through the solicitation and award processes as well as post award.

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

Response

DPS agrees with this recommendation. As demonstrated to Sunset staff, DPS does track and monitor its procurement process to identify potential bottlenecks, risks, issues and opportunities for process improvements.

DPS agrees that the CAPPS Financials implementation should provide DPS with an automated approach to tracking key milestones as a more efficient and timely means of identifying potential issues in comparison to the manual methods that are currently in place.

DPS agrees with providing target timeframes, and as shared with Sunset staff, the department has done so through the use of acquisition plans that have been implemented and tracked by the management team since 2013. Having an automated capability to track this information would greatly enhance this level of oversight and enable the management team to identify potential issues earlier in the process; therefore, DPS will continue to seek funding for this capability.

DPS agrees and plans to continue its practice, with the opportunity to rely more upon a system capable of supporting this level of traceability, tracking, evaluating and reporting requisitions that exceed timelines to executive leadership. P&CS will also extend this practice to include sharing status information with all division staff in addition to providing it to the division management.

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.

Response

DPS agrees with this recommendation. As such, DPS will again pursue its Exceptional Items request to procure not only a document management system, but a contract management and electronic bid system as well, in its continued efforts to adhere to best practices in contracting.

DPS does centrally store the required documentation between two systems and recognizes that it would benefit greatly from housing all documentation in a single repository.

DPS will continue its compliance with posting required contracts on its website in accordance with SB20 and Texas Government Code § 2261.253.

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.

Response

DPS agrees with this recommendation and will continue with its practice of conducting a business case, which includes a cost benefit analysis, for new requests to outsource a major function or service. Additionally, DPS has added this documentation to the renewal process.