



Kim Vickers
Executive Director

TEXAS COMMISSION ON LAW ENFORCEMENT

Quarterly Meeting Minutes December 3, 2015

On Thursday, December 3, 2015, at 9:30 a.m., the quarterly meeting of the Texas Commission on Law Enforcement (TCOLE) was held at the J.J. Pickle Research Campus, The Commons Learning Center, 10100 Burnet Road, Bldg 137, Austin, Texas.

Commissioners attending were Sheriff Joel W. Richardson, Presiding Officer; Ms. Patt Scheckel-Hollingsworth, Assistant Presiding Officer; Major Jason Hester, Secretary; Ms. Patricia Burruss; Constable Ron Hood; Mr. Rob Kyker; Mr. James Oakley; Senior Police Officer Joe Pennington; and Chief Ruben Villescás.

Raymond Winter and Veena Mohan represented the Office of the Attorney General. TCOLE staff attending included Executive Director Kim Vickers, Operations Director John Helenberg, Legal Counsel John Beauchamp, Finance Director Brian Roth, Government Relations Director Gretchen Grigsby, Division Chief Michael Antu; Lisa Landry, Lynn Beard, Gary Connella, Thurman Felder, Dennis Graffious, Richard Gutierrez, Nicole Hendrickson, Mike Hobbs, Jason Hufstetler, Laurie Jackson, Kenny Merchant, Derry Minor, Ken Mobley, Doug Skolaut, Donna Suderman, Jessica Teseny, Tracy Weems, and Kaye Wilson.

Agenda item #1, Call to order

Presiding Officer Richardson called the meeting to order at 9:30 a.m. The presentation of colors was by the Austin Police Department Honor Guard consisting of Sgt. Richard Davis, Sgt. Keith Bazzle, Officer Curtis Pandolf, and Officer Bonnie Caudell. The pledge of allegiance was led by Commissioner Burruss with Commissioner Hester giving the invocation. Roll was called and a quorum was present.

Agenda item #2, Reading of peace officer/jailer deaths since the September 2015 meeting.

- Deputy Constable Jeffrey Radford, Bell County Constable Pct 3, EOW October 28, 2015
- Sergeant William "Karl" Keese, Texas Department of Public Safety-Texas Highway Patrol, EOW October 29, 2015
- Chief Darrell Lemond Allen, Marlin Police Department, EOW November 10, 2015

Chief Gene Ellis, Belton Police Department read the names of Deputy Constable Radford who was a highly decorated Viet Nam veteran, and Chief Allen, a personal friend and active member of the Central Texas Police Chief's Association and the Texas Police Chief's Association. Ken Mobley read Sgt. Keesee's name. Presiding Officer Richardson asked for a moment of silence.

Agenda item #3, Approval of the minutes of the September 10, 2015, quarterly commission meeting at Austin, Texas.

Commissioner Oakley made a motion to approve the minutes. Commissioner Burruss seconded the motion. The motion passed unanimously.

Agenda item #4, Receive reports. Take action if necessary.

- Executive Director's Report
Executive Director Vickers introduced two new employees, Donna Suderman, an administrative assistant in Enforcement and Doug Skolaut, an investigator in Enforcement.

Interviews have been conducted for an academy evaluator position and applications are being received for a position in McAllen.

The annual training coordinators' conference had a record number of registrations and offered outstanding presenters and excellent vendors. The after-hours events raised over \$7,300 for the Peace Officers' Memorial.

We will be holding regional workshops in the next couple of months to gather information to use for the agency's strategic plan. Locations and dates will be announced as soon as possible.

Commissioner Villescas asked about changes to the L3 psychological system. Mr. Vickers said that staff is reviewing and revamping the system.

Commissioner Hester thanked Mr. Vickers and finance director, Brian Roth, and staff for their fiscal responsibility to the agency.

- Operations Director's Report
Director Helenberg noted that 496 non-compliance letters have been mailed and cases opened, and that Enforcement has already closed 75 of the cases.

Office renovations are underway to create 4 new offices for Enforcement.

Mr. Vickers stated we had 100% compliance on racial profile reports for 2014 and thanked Gary Connella for his efforts in working with agencies to complete and submit their reports.

- Government Relations Director's Report
Director Grigsby said the Lt. Governor and Speaker have introduced interim charges relating to officer safety, and monitoring open carry and body camera programs. Mental health issues will be a continuing issue, and the Speaker has created a committee to address mental health in hospitals and jails using the Bexar County Sheriff's Office as a model.

Commissioner Oakley made a motion to accept all reports with Commissioner Burruss seconding the motion. The motion passed unanimously.

Presiding Officer Richardson announced the 2016 quarterly commission meeting dates. All meetings will be at the J.J. Pickle Research Campus, The Commons Learning Center, 10100 Burnet Road, Bldg 137, Austin, Texas.

March 3, 2016

June 23, 2016

September 8, 2016

December 1, 2016

Agenda item #5, Discuss and take action on final orders of amendments to existing and new TCOLE rules.

- Final Amendment 1
§211.1. Definitions. (amend "Background Investigation")

Commissioner Hester made a motion to adopt final amendment 1.
Commissioner Oakley seconded the motion. The motion passed unanimously.

- Final Amendment 2
§211.1. Definitions. (new definition of "Contract Jailer")

Commissioner Hester made a motion to adopt final amendment 2.
Commissioner Oakley seconded the motion. The motion passed unanimously.

- Final Amendment 3
§211.1. Definitions. (amend “Community Supervision”)

Commissioner Hollingsworth made a motion to adopt final amendment 3.
Commissioner Kyker seconded the motion. The motion passed unanimously.

- Final Amendment 4
§211.1. Definitions. (new definition of “Honorably Retired Peace Officer”)

Commissioner Hollingsworth made a motion to adopt final amendment 4.
Commissioner Oakley seconded the motion. The motion passed unanimously.

- Final Amendment 5
§211.5. Licensee Lists. (repeal)

Commissioner Oakley made a motion to adopt final amendment 5.
Commissioner Burruss seconded the motion. The motion passed unanimously.

- Final Amendment 6
§211.7. Meeting Dates and Procedures. (amend)

Commissioner Oakley made a motion to adopt final amendment 6.
Commissioner Kyker seconded the motion. The motion passed unanimously.

- Final Amendment 7
§211.13. Notice of Commission Rulemaking. (repeal and replace)

Commissioners Oakley and Hollingsworth made motions to adopt final amendment 7. Commissioner Kyker seconded the motion. The motion passed unanimously.

Commissioner Hester asked how we currently notify stakeholders of adopted rules and Mr. Vickers said this is done electronically, through the agency’s website.

- Final Amendment 8
§211.16. Establishment of an Appointing Entity. (amend)

Commissioner Oakley made a motion to adopt final amendment 8.
Commissioner Hester seconded the motion. The motion passed unanimously.

- Final Amendment 9
§211.25. Date of Appointment. (amend)

Commissioner Hollingsworth made a motion to adopt final amendment 9.
Commissioner Burruss seconded the motion. The motion passed unanimously.

- Final Amendment 10
§211.29. Responsibilities of Agency Chief Administrators. (amend)

Presiding Officer Richardson asked Legal Counsel Beauchamp to group the final amendments to expedite the voting process.

- Final Amendment 11
§211.35. Tuition Reimbursement for Commission Employees. (new)
- Final Amendment 12
§215.9. Training Coordinator. (amend)
- Final Amendment 13
§215.13. Risk Assessment. (amend)
- Final Amendment 14
§217.1. Minimum Standards for Enrollment and Initial Licensure. (amend)
- Final Amendment 15
§218.9. Continuing Firearms Proficiency Requirements. (amend)
- Final Amendment 16
§219.1. Eligibility to Take State Examinations. (amend)
- Final Amendment 17
§219.11. Reactivation of a License. (repeal and replace)
- Final Amendment 18

§219.13. Retired Peace Officer Reactivation. (repeal and consolidate into Final Amendment 17)

- Final Amendment 19

§221.3. Proficiency Certificates. (amend)

§221.3. Peace Officer Proficiency. (repeal and consolidate into Final §221.3)

- Final Amendment 20

§221.5. Jailer Proficiency. (repeal and consolidate into Final Amendment 19)

- Final Amendment 21

§221.13. Emergency Telecommunications Proficiency. (repeal and consolidate into Final Amendment 19)

- Final Amendment 22

§221.43. School-Based Law Enforcement Proficiency Certificate. (new)

- Final Amendment 23

§223.1. License Action and Notification. (amend)

Commissioner Oakley made a motion to adopt final amendments 10-31. Commissioner Pennington seconded the motion. The motion passed unanimously.

Commissioner Oakley amended his motion to adopt final amendments 10-23. Commissioner Pennington seconded the amended motion. The amended motion passed unanimously.

- Final Amendment 24

§223.3. Answer Required. (amend)

Mr. Beauchamp noted that staff recommends making non-substantive changes to Final Amendment 24, §223.3. Answer Required. Subsection (a) from the proposed rule reads, in part:

In order to preserve the right to a hearing as described under this subchapter, an answer must be filed not later than 20 days after the date the respondent is provided with notice of the executive director's petition or notice of violation.

Staff recommends changing *is provided with* to *receives*.

Commissioner Burruss asked if the notice of petition or violation is sent by certified mail to which Mr. Beauchamp responded that it is.

Commissioner Hester made a motion to adopt final amendment 24 with the non-substantive changes. Commissioner Oakley seconded the motion. The motion passed unanimously.

- Final Amendment 25
§223.5. Contested Cases and Hearings. (amend)

- Final Amendment 26
§223.5. Filing of Documents. (repeal and consolidate into new §223.5)

§223.7. Contested Cases and Hearings. (repeal and consolidate)

§223.9. Place and Nature of Hearings. (repeal and consolidate)

§223.11. Proposal for Decision and Exceptions or Briefs. (repeal and consolidate)

- Final Amendment 27
§223.14. Construction of Other Laws. (reorganize from current suspension rule)

Mr. Beauchamp suggested taking final amendments 25 – 27 as a group. Commissioner Oakley made a motion to adopt final amendments 25 – 27. Commissioner Kyker seconded the motion. The motion passed unanimously.

- Final Amendment 28
§223.15. Suspension of License. (amend)

Mr. Beauchamp noted non-substantive changes recommended by staff.

Commissioner Oakley made a motion to adopt final amendment 28 with the changes. Commissioner Villescas seconded the motion.

After further discussion, Commissioner Oakley amended his motion to adopt final amendment 28 as written in the September proposed rule. Commissioner

Hollingsworth seconded the amended motion. The amended motion passed unanimously.

- Final Amendment 29
§223.16. Suspension of License for Constitutionally Elected Officials. (repeal and consolidate into Final Amendment 28)
- Final Amendment 30
§223.16. Probation and Mitigating Factors. (reorganize from current suspension rule)
- Final Amendment 31
§223.17. Reinstatement of a License. (amend)

Mr. Beauchamp suggested grouping final amendments 29 – 31.

Commissioner Oakley made a motion to adopt final amendments 29, 30, and 31. Commissioner Kyker seconded the motion. The motion passed unanimously.

- Final Amendment 32
§223.18. Suspension Following Felony Arrest. (new)

Supplemental materials were provided to the commission. Mr. Beauchamp noted that staff recommends non-substantive changes to the proposed rule. Subsection (d) of the proposed rule reads:

If an offense constitutes immediate peril, the commission will notify the person of the summary suspension order and the intention to initiate proceedings, if applicable, upon final disposition of criminal proceedings.

Staff recommends removing “*if applicable, upon final disposition of criminal proceedings.*”

Subsection (f) of the proposed rule reads, in part:

Otherwise, the license remains suspended until final disposition of the case.

Staff recommends removing “*remains*” and inserting “*may be.*”

There was discussion and clarification on procedures for implementing the proposed rule.

Jon Taylor, Assistant Chief, DFW Airport Police, representing the North Texas Police Chief's Association, spoke in support of this rule change.

Commissioner Hollingsworth made a motion to accept final amendment 32 with the amendments made by Mr. Beauchamp. Commissioner Hester seconded the motion. The motion passed unanimously.

The Commission took a break from 10:30 a.m. until 10:50 a.m.

- Final Amendment 33
§223.19. License Revocation. (amend)

§223.20. Revocation of License for Constitutionally Elected Officials. (repeal and consolidate)
- Final Amendment 34
§223.21. Appeal. (repeal and consolidate into Final Amendment 26)
- Final Amendment 35
§227.1. Appointing Entity Responsibilities. (amend)
- Final Amendment 36
§227.3. School Marshal Licensing and Reporting Requirements. (amend)
- Final Amendment 37
§227.5. School Marshal Training Entities. (amend)
- Final Amendment 38
§227.9. License Action. (amend)
- Final Amendment 39
§227.11. Confidentiality of Information. (repeal)
- Final Amendment 40
§218.11 Child Safety Check Alert List Training. (new)
- Final 42
Re-adoption of all other existing rules not amended or repealed

Mr. Beauchamp grouped Final Amendments 33 – 40 and 42.

Commissioner Oakley made a motion to adopt final amendments 33 – 40 and 42. Commissioner Villegas seconded the motion. The motion passed unanimously.

- Final Amendment 41
§219.25. License Requirements for Persons with Military Special Forces Training.
(amend)
There was no vote taken on this final amendment.

Agenda item #6, Discussion of and take actions on proceedings for revocation, suspension, and other disciplinary actions.

Mr. Winter addressed the Commission, reviewing the disciplinary actions.

Default Suspension Orders

Ardoin, Kevin J.	Jailer	Harris County Sheriff's Office
Bacon, David M.	Jailer	Kaufman County Sheriff's Office
Brown, Allen R.	Jailer/Peace Officer	Jefferson County Sheriff's Office
Elizondo, Simon	Peace Officer	Big Spring Police Department
Kizziah, Stacey F.	Telecommunicator	Spring Valley Police Department
Rodriguez, Jr., Juan F.	Peace Officer	Indian Lake Police Department
Wyatt, Wade L.	Jailer/Peace Officer	Henderson County Sheriff's Office

Commissioner Hollingsworth made a motion that the Commission accept and adopt the recommendations of the Executive Director to enter a Default Final Order as authorized under the provisions of the Texas Administrative Code, 223.3, and as required under the provisions of Occupations Code, 1701, Section 1701.501 to suspend the license of Kevin Ardoin, David Bacon, Allen Brown, Simon Elizondo, Stacey Kizziah, Juan Rodriguez, Jr., and Wade Wyatt. Commissioner Oakley seconded the motion. The motion passed unanimously.

Default Revocation Orders

Estrada, Phillip M.	Peace Officer	Amarillo Police Department
Kuczynski, William J.	Peace Officer	Whitesboro Police Department
Morris, Kyle J.	Jailer	Collin County Sheriff's Office

Commissioner Hollingsworth made a motion that the Commission accept and adopt the recommendations of the Executive Director to enter a Default Final Order as authorized under the provisions of 37 Texas Administrative Code, Section 223.3 as required under the provisions of Chapter 1701, Section 1701.501 to revoke the licenses of Phillip M. Estrada, William J. Kuczynski, and Kyle J. Morris. Commissioner Oakley seconded the motion. The motion passed unanimously.

Default Cancellation Orders

Guevara, Anahi	Jailer	Maverick County Sheriff's Office
Lopez, David L.	Jailer	Val Verde County Sheriff's Office
Lusk, Jordan T.	Peace Officer	Aransas Pass Police Department
Poulter, Ricky L.	Jailer	Johnson County Sheriff's Office

Commissioner Hollingsworth made a motion that the Commission accept and adopt the recommendations of the Executive Director to enter a final Default Cancellation Order to cancel the licenses of Anahi Guevara, David L. Lopez, Jordan T. Lusk, and Ricky L. Poulter. Commissioner Burruss seconded the motion. The motion passed unanimously.

Agreed Suspension Order

Mitchell, Frank	Peace Officer	Montgomery County Constable Pct. 3
-----------------	---------------	------------------------------------

Commissioner Hollingsworth made a motion that the Commission accept and adopt the recommendations of the Executive Director to enter a final Agreed Suspension Order for Frank Mitchell. Commissioner Villescascas seconded the motion. The motion passed unanimously.

Suspension Order Based on Withdrawal of Appeal

Escareno, Nicholas	Jailer/Peace Officer	Bexar County Sheriff's Office
--------------------	----------------------	-------------------------------

Mr. Escareno addressed the Commission.

Commissioner Hollingsworth made a motion that the Commission accept and adopt the recommendations of the Executive Director to enter a final Suspension Order for

Nicholas Escareno. Commissioner Hester seconded the motion. The motion passed unanimously.

Proposal for Decision Orders

Clayton, Stephen R. Peace Officer Austin I.S.D. Police Department

Mr. Clayton was convicted of a Class B misdemeanor, Driving While Intoxicated. The Administrative Law Judge recommended a suspension of 10 years with all 10 years probated. The Executive Director filed exceptions recommending a 10 year suspension with 2 years suspension and 8 years probated.

Mr. Clayton spoke on his behalf.

Commissioner Hollingsworth made a motion to decline the recommendations of the Administrative Law Judge and adopt the Executive Director's recommendation of a 10 year suspension with 2 years enforced and 8 years probated. Commissioner Hester seconded the motion. The motion passed unanimously.

Lucas, Kirk H. Jailer Bexar County Sheriff's Office

Mr. Kirk received a deferred adjudication for Simple Assault, a Class C misdemeanor, that allegedly involved an act of family violence. The Administrative Law Judge recommended that the license should not be suspended. The Executive Director filed exceptions and recommends a suspension of 10 years. The Administrative Law Judge responded to the exceptions recommending a 30 day probated suspension or issuance of a written reprimand.

Marilyn Bradley, attorney for Mr. Lucas, addressed the Commission.

Commissioner Hollingsworth made a motion to decline the recommendation of the Administrative Law Judge and adopt the recommendation of the Executive Director to suspend the license for 10 years. Commissioner Hester seconded the motion. The motion passed unanimously.

Smith, Leroy J. Jailer/Peace Officer Travis County Sheriff's Office

Mr. Smith was convicted of Obstructing a Highway or Passageway, a Class B misdemeanor. The Administrative Law Judge recommended a 30 day suspension of the license. The Executive Director filed exceptions recommending a 10 year suspension with the first 2 years enforced and the remaining 8 years probated.

Leroy Smith and Matthew Smith addressed the Commission.

Commissioner Hollingsworth made a motion to decline to adopt the Administrative Law Judge's recommendation and adopt the Executive Director's recommendation of a 10 year suspension with 2 years enforced and 8 years probated. Commissioner Hood seconded the motion. The motion passed with Commissioner Hester opposing.

Valadez, Jr., Luis D. Jailer/Peace Officer Premont Police Department

Mr. Valadez was placed on deferred adjudication for reckless driving. The Administrative Law Judge recommended a 30 day suspension followed by a 9 year, 11 month probated suspension. The Executive Director filed exceptions recommending a 10 year suspension with the first 2 years enforced and the remaining 8 years probated.

Mr. Valadez spoke on his own behalf.

Commissioner Hollingsworth made a motion to decline the recommendation of the Administrative Law Judge and adopt the recommendation of the Executive Director for a 10 year suspension with 2 years enforced and 8 years probated. Commissioner Hester seconded the motion. The motion passed unanimously.

For Information Only

Mr. Winter noted that the remaining items are for information only and did not require action.

Statutory Revocation

Bockman, Preston A. Jailer Burnet County Sheriff's Office
Cano, Richard M. Peace Officer Houston I.S.D. Police Department

Ferguson, Kendrick J.	Peace Officer	Houston Police Department
Horn, David K.	Jailer/Peace Officer	Hooks Police Department
Lockett, Blake E.	Jailer	Caldwell County Sheriff's Office
Roberts, Jerry L.	Peace Officer	Hardin County Sheriff's Office
Tolbert, Corey L.	Peace Officer	Cuero Police Department

Statutory Suspension

Harrington, Linda S.	Jailer	Palo Pinto County Sheriff's Office
Reamy, Jerad L.	Jailer	Cherokee County Sheriff's Office
Spurlock, Zachary T.	Temporary Jailer	Jack County Sheriff's Office

Permanent Surrenders

Aguillar, Armando	Peace Officer	Cameron County Sheriff's Office
Alvarado, Ricardo	Peace Officer	Cameron County Sheriff's Office
Bauer, Paul G.	Peace Officer	Dallas Police Department
Camacho, Jr., Octavio	Peace Officer	Cameron County Sheriff's Office
Cox, Michael J.	Peace Officer/ Telecommunicator	Hill County Sheriff's Office
Deshazo, Douglas L.	Jailer	Harris County Sheriff's Office
Dittrich, Russell E.	Jailer/Peace Officer	Giddings Police Department
Gass, Davis E.	Peace Officer	Harris County Constable Pct. 6
Guardiola, Mauricio D.	Jailer/Peace Officer	Cameron County Sheriff's Office
Johnson, La'Cori C.	Peace Officer	Dallas Police Department
Kee, Robert J.	Peace Officer	Williamson County Sheriff's Office
Macchio, Daniel F.	Peace Officer	Grapevine Police Department
Marquez, Aurelio	Peace Officer	Dallas Area Rapid Transit
McCormack, Mark D.	Jailer/Peace Officer	Gunter Police Department
Neal, Jackie L.	Peace Officer	San Antonio Police Department
Sanchez, Adan	Peace Officer	Weslaco Police Department
Sargent, Stephen B.	Peace Officer	Houston Police Department
Thomas, Justin R.	Peace Officer	Dallas Police Department
Torres, Billy D.	Jailer/Peace Officer	Bexar County Sheriff's Office
Wallace, David W.	Peace Officer	Montgomery County Sheriff's Office
Wilson, Mark H.	Peace Officer/Jailer/ Telecommunicator	Hill County Sheriff's Office

Reprimands for Administrative Violations

Campos, Paul D.	Peace Officer	Yorktown Police Department
-----------------	---------------	----------------------------

Nave, Tammy	Peace Officer	Harris County Constable Pct. 4
Turley-Ward, Tonya	Peace Officer	Harris County Constable Pct. 4
Rodriguez, Jose	Peace Officer	Jones Creek Police Department
Vega, Luis	Peace Officer	Socorro I.S.D. Police Department

Reprimands for Failing to Complete Legislatively Required Continuing Education

Amador, Jesus	Peace Officer	Kleberg County Constable Pct. 2
Flores, Peter P.	Peace Officer	Texas Parks and Wildlife Department
Giesalhart, Darlene C.	Peace Officer	El Campo Police Department
Guyewski, Stanley	Peace Officer	Bexar County Constable Pct. 3
Hoskins, Fred W.	Peace Officer	Caldwell County Sheriff's Office
Hutchings, Christopher	Peace Officer	Covington Police Department
Lee, Jewel, J.	Peace Officer	Titus County Constable Pct. 1
Livingston, John C.	Peace Officer	Tarrant County Constable Pct. 7
Martinez, Urbino	Peace Officer	Brooks County Sheriff's Office
McKinney, Rory	Peace Officer	Midland County Sheriff's Office
Mendoza, Eddie B.	Peace Officer	Cameron County Constable Pct. 2
Morris, Mark E.	Peace Officer	Falls County Sheriff's Office
Parker, David M.	Peace Officer	Hardin County Sheriff's Office
Prescott, Montgomery	Peace Officer	Duval County Sheriff's Office
Smith, Roy D.	Peace Officer	Dallam County Constable Pct. 1
Williams, Joseph M.	Peace Officer	Waller County Constable Pct. 4

Agenda item # 7, Receive public comment on any topic, without action.

The Presiding Officer asked if there was anyone wishing to make a public comment. No one came forward.

The Commission recessed from 12:15 p.m. until 12:30 p.m.

Agenda item #8, Executive Session to discuss pending litigation and personnel issues, including evaluation of executive director's job performance, pursuant to sections 551.074 and .071 of the Texas Government Code, Open Meetings Act.

The Commission convened in executive session at 12:30 p.m.

Agenda item #9, Return from Executive Session to report and /or discuss further actions to be taken as a result of the Executive Session. Take action, if necessary.

At 12:50 p.m., the Commission returned from executive session. No votes were taken during session, and there was no business to discuss from the Executive Session.

Agenda item #10, Adjourn.

The Presiding Officer adjourned the meeting at 12:51 p.m., and announced that the next quarterly meeting will be March 3, 2016.

Jason D. Hester, Secretary
JDH/kw