

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §227.1, Appointing Entity Responsibilities, and new 37 Texas Administrative Code §227.4, Demonstration of Psychological Fitness, and §227.6, Fit for Duty Review, with non-substantive changes to the proposed text as published in the March 22, 2024 issue of the *Texas Register* (49 TexReg 1882-1883). The rules will be republished.

This adopted amended rule and these adopted new rules conform with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R). Texas Occupations Code §1701.167 requires the Commission to adopt standards and procedures for the psychological examination of school marshal applicants, school marshal licensees, and school marshal licensees for whom there is reason to believe a new examination is necessary (fit for duty review) to ensure the individuals are able to perform the duties for which the school marshal license is required. This adopted amended rule and these adopted new rules outline the requirements and processes for the psychological examination of school marshal applicants and renewal applicants as well as the fit for duty psychological examination of school marshal licensees requested by the Commission. There is also a clarification of the reporting requirements for school marshal appointing entities.

The public comment period began on March 22, 2024, and ended on April 29, 2024, at the conclusion of the public meeting of the Commission. No public comments were received regarding the proposed adoption of these rules.

The amended rule and new rules are adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The amended rule and new rules as adopted affect or implement Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.167, Policy Regarding Examination of License Holder or Applicant, and §1701.260, Training for Holders of License to Carry a Handgun; Certification of Eligibility for Appointment as School Marshal. No other code, article, or statute is affected by this adoption.

The adopted amended rule and adopted new rules have been reviewed by legal counsel and found to be a valid exercise of the Commission's legal authority.

§227.1. Appointing Entity Responsibilities.

- (a) A school district, open-enrollment charter school, public junior college, or private school shall:
- (1) submit and receive approval for an application to appoint a person as a school marshal;
 - (2) upon authorization, notify the commission using approved format prior to appointment;
 - (3) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the appointing entity;
 - (4) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the appointing entity, commission standards, another state agency, or under other law;

(5) immediately report to the commission a school marshal's violation of any commission standard, including the discharge of a firearm carried under the authorization of this chapter outside of a training environment; and

(6) immediately report to the commission any indication, suspicion, or allegation that a school marshal is no longer psychologically fit to carry out the duties of a school marshal.

(b) An appointing entity shall not appoint or employ an ineligible person as a school marshal.

(c) For five years, the appointing entity must retain documentation that it has met all requirements under law in a format readily accessible to the commission. This requirement does not relieve an appointing entity from retaining all other relevant records not otherwise listed.

(d) The effective date of this section is September 1, 2024.

§227.4. Demonstration of Psychological Fitness.

(a) In order for an individual to enroll in any school marshal licensing training, obtain a school marshal license, or renew or reapply for a school marshal license, they must first demonstrate psychological fitness through a psychological examination.

(b) The psychological examination shall be conducted by a professional selected by the appointing, employing entity. The professional shall be either a psychologist licensed by the Texas State Board of Examiners of Psychologists or a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties of a school marshal.

(c) The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of:

(1) a review of the duties and responsibilities of a school marshal as developed by the commission;

(2) at least two instruments, one which measures personality traits and one which measures psychopathology; and

(3) a face-to-face interview conducted after the instruments have been scored.

(d) The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to carry out the duties of a school marshal in an emergency shooting or situation involving an active shooter.

(e) If, after examination, the professional declines to declare the individual as psychologically fit, the individual must report the outcome to the commission on a form prescribed by the commission.

(f) An examination for license renewal or reactivation must be conducted within 90 days of the date of the application for license renewal or reactivation.

(g) The effective date of this section is September 1, 2024.

§227.6. Fit for Duty Review.

(a) When the commission receives a report or other reliable information that a school marshal may no longer be psychologically fit to carry out the duties of a school marshal, the commission may:

(1) issue an emergency suspension order; or

(2) require a fit for duty review upon identifying factors that indicate the licensee may no longer be able to perform the duties of a school marshal safely and effectively.

(b) The commission shall provide written notice of the psychological examination to the license holder not later than the tenth business day before the deadline to submit to the examination. Written notice shall include the reasons for the examination.

(c) The examination shall be conducted by a psychiatrist or psychologist chosen by the licensee.

- (d) To facilitate the examination of any licensee, the commission will provide all appropriate documents and available information.
- (e) The examining practitioner will provide the commission with a report indicating whether the school marshal is fit for duty. If the school marshal is unfit for duty, the practitioner will include the reasons or an explanation why the individual is unfit for duty.
- (f) A second examination may be ordered by the commission if the commission questions the practitioner's report. The examination will be conducted by a psychiatrist or psychologist appointed by the commission. If the report of the appointed practitioner disagrees with the report of the initial practitioner, the final determination as to the school marshal's fitness shall be decided by the Executive Director.
- (g) A school marshal who fails a psychological examination shall have their license suspended until the Executive Director orders it reinstated.
- (h) Any school marshal ordered to undergo a fit for duty review shall comply with the terms of the order and cooperate fully with the examining practitioner.
- (i) The effective date of this section is September 1, 2024.