

## MINUTES – WORK SESSION

The work session of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) was held on Thursday, June 2, 2011, at 8:30 a.m. The meeting was held at the J.J. Pickle Research Campus, The Commons Learning Center, 10100 Burnet Road, Bldg 137, Austin, Texas.

Commissioners attending were: Constable Charles Hall, Presiding Officer; Mr. Steve Griffith, Assistant Presiding Officer; Dr. Johnny E. Lovejoy, II, Secretary; Mr. James Oakley; Senior Police Officer Joe Pennington; Sheriff Joel Richardson; Ms. Patt Scheckel-Hollingsworth; Chief Ruben Villescas; and Mr. Randy Watson.

Also attending were Assistant Attorneys General Raymond Winter and Daniel Wiseman. TCLEOSE staff members attending included Executive Director Timothy A. Braaten, Director Kim Vickers, Director Brian Roth, Director Chris Davis, Laurie Abernathy, Claire Allman, Jason Ball, Lynn Beard, Darla Dixon, Thurman Felder, Dennis Graffious, Richard Guterrez, Nicole Hendrickson, Sharon Melton, Kenneth Merchant, Ivan Messer, Ken Mobley, Carnecia Penson, Kaye Wilson, and Mary Kay Wright.

### **Agenda item #1, Call to order**

The flags were presented by the Cedar Park Police Department Honor Guard. Honor Guard members included Officer Robin Rodriguez, Officer Kristy Britt, Officer Melissa Loest, and Officer Jason Schmidt. Commissioner Watson led the pledge of allegiance to the American flag and Commissioner Lovejoy led the pledge to the Texas flag. The roll call of board members confirmed that all Commissioners were present.

### **Agenda item #2, Presiding Officer's Report**

The presiding officer reminded all in attendance that the legislature has been called into special session by the governor.

### **Agenda item #3, Executive Director's Report**

The Commissioners were provided the full report in the notebooks they received prior to the meeting. Executive Director Braaten expounded further on several items. If the budget, as currently written, is passed, TCLEOSE will have 37.6 full time employee (FTE) positions, down from the present level of 46. Executive Director Braaten reminded all in attendance that tomorrow, June 3, will be the Achievement Award presentation at the Senate auditorium. The first annual Friends of the Peace Officers' Memorial golf tournament will net approximately \$31,000, which will be forwarded to the Texas Preservation Board. The memorial needs approximately \$300,000 in repairs. Executive Director Braaten recognized those staff members that worked on the golf tournament fund raiser and Presiding Officer Hall asked those members present to stand and be recognized.

At the March 2011 meeting, Commissioner Villescas requested quarterly updates on the statistics of the number of officers arrested in the previous quarter, and a report on cases where the Commission has previously taken action or granted a waiver and the individual has again been involved in misconduct. This information was provided to the Commissioners and Executive Director Braaten assured them that this will continue to be included in future executive director reports.

### **Agenda item #4, Reports, items to discuss, follow-up items from previous meeting**

- a. Psychological exam committee update – Executive Director Braaten noted that the committee reviewed two specific areas; fitness for duty and minimum standards for a psychological exam. He explained that the psychological exams performed by a psychologist will include 2 areas of inventory, a personality profile and

a psychopathology exam with a face-to-face interview. The applicant must have a background investigation form with them at the time of the exam. Fitness for duty will be defined, and if an agency includes the fitness for duty, there will be parameters. Executive Director Braaten stated that staff will bring a proposed rule to the next meeting. Dr. Lovejoy noted that at this time there are too many standards of exams in the state. Executive Director Braaten further added that in order for a law enforcement agency to be created, they must have written policies. Staff is recommending a fitness for duty policy be included in these mandated policies. Presiding Officer Hall offered the Commission's thanks to the members of the study committee.

- b. Definition of minimum background investigation and mitigating circumstances - Executive Director Braaten stated that these will be brought to the next meeting as a proposed rule, if the Commissioners give their approval. Staff continues to revise the personal history statement.
- c. Chapter 53 requirements for jailers – Director Davis stated that HB 1402 exempts all licensees from Chapter 53, including jailers. No further action is needed on this item.
- d. Quo warranto – Director Davis indicated there are 3 pending quo warranto actions to remove constables from office, two of these constables are currently in office and did not become licensed within two years of taking office. The remaining constable is licensed, but failed to do the legislatively mandated training.

#### **Agenda item #5, Items of Interest**

- a. Last Chance Agreement – Executive Director Braaten explained that this agreement would only be used in non-violent Class B misdemeanors and Class B misdemeanors where there is no family violence. With a Last Chance Agreement, an individual decides to not take their case to the State Office of Administrative Hearings (SOAH), and instead can agree to a mandatory hard suspension of 120 days. The remainder of the suspension is probated and if any violation occurs during that time, the remainder of the time is actual suspension plus one year. The individual will have to take corrective action as part of the agreement. For example, if convicted of DWI, take a class in alcohol awareness. The agreement requires annual reporting to TCLEOSE and notification to any prospective employer that they are on a suspended status, and there has to be departmental action taken against the individual. The agreement also allows for the time of the suspension to be backdated to the date of conviction. The agreement would be written such that staff could sign the agreements. Commissioner Hollingsworth questioned cases that are non-violent. Executive Director Braaten clarified that these would be instances where anger and violence were expressed verbally. We may have to look at the elements of the crime and not just the conviction. Commissioner Hollingsworth asked for input from groups such as the Sheriff's Association of Texas and the Texas Police Chiefs Association. Executive Director Braaten stated that although this has not been presented to the groups mentioned, there are several agencies in the state that currently follow a similar practice. Commissioner Griffith inquired whether this will decrease the number of cases going to SOAH and the response was that it is very likely the number of cases will decrease. Commissioner Villescas asked that staff seek input on the agreement from the Chief's Association. He also questioned how the random drug and alcohol testing will be funded, and what parameters will be set for reviewing the results of the tests. Staff will return with information on how decisions will be made concerning the parameters. There was additional discussion concerning TCLEOSE paying for the random testing. Robert Armbruster, Attorney with the Houston Police Union, addressed the Commission suggesting that the cost of drug testing should be a condition of probation with a copy of the results going both to the Commission and to the individual. Mr. Armbruster asked that when there are proposed rule changes such as this, that these changes be posted on the TCLEOSE web site as well as the Texas Register. He also suggested that for alcohol abuse and PTSD, we may consider using standardized tests such as the SASSI 9 or MMPI to identify tendencies for that type of behavior. There was further discussion on this topic.

- b. Administrative penalty schedule – Director Davis explained that this is derived from the results of the Sunset legislation where 1701 was amended to include administrative penalties assessed to governmental entities. Staff has developed a schedule for the Commission to consider. The intent is when the Commission is not receiving cooperation from a governmental entity, a fine can be assessed after due process, which includes a SOAH hearing. If this is approved, staff will return at the next meeting with a proposed rule. Commissioner Pennington asked how often this administrative penalty schedule would be used. Director Davis does not believe it will be used often because we currently can take administrative action on a chief administrator's license. This rule will give the Commission leverage in cases where a chief administrator is not licensed. Staff doesn't anticipate needing to use this sanction often, and not on a first violation, but more on continuous, repetitive violations. These will usually be discovered during agency audits, and the administrator refuses to correct the violation.
- c. Begin discussion of Commission meeting dates, meeting location, hotel for December 2011 – December 2012 – Commissioners were provided a calendar of events for 2012 that may impact the convenience of Commission meetings in Austin. Commissioners were asked to consider when they want to schedule the 2012 meetings and the location of these meetings. Commissioner Pennington was asked to determine election dates for the calendar year so that meeting will not interfere with these important dates. Presiding Officer Hall asked that we consider moving the meetings from the first week of the quarter to the second.

**Agenda item #6, Consider and receive public comment on the application of the Missouri City Police Department to be a contractual training provider**

Director Vickers noted that he has reviewed the application and there are no items of concern. By rule, the agency administrator must appear before the Commissioners prior to action being taken on the application. Commissioner Griffith stated he met with the chief and 2 assistant chiefs, and due to the chief being a member of an IACP committee that was meeting this date, he would be unable to attend the TCLEOSE meeting and represent his agency. Commissioner Griffith asked for consideration of the application without the chief being present. Mike Berezin and Keith Jemison appeared before the Commission and were available to answer questions.

**Agenda item #7, Consider and receive public comment on the application of the Pearland Police Department to be a contractual training provider**

Director Vickers informed the Commission that he has reviewed the application and has no items of concern. Chief J.C. Doyle appeared before the Commission, and spoke about the training facility that has been built. He was available for questions from the Commission.

**Agenda item #8, Consider and receive public comment on the application of the San Juan Police Department to be a contractual training provider**

Director Vickers noted that he has reviewed the application and has no items of concern. Chief Juan Gonzales addressed the Commissioners and stated that border violence in south Texas is an issue that will be addressed in the training program. His agency will be providing free or low cost training to agencies in the area. Commissioner Pennington noted that the agency will be offering specialized courses for 2011 that are region specific. Commissioner Pennington asked if the agency has established liaisons with the Mexican police in adjoining states, to which Chief Gonzalez responded that they have established a relationship.

**Agenda item #9, Consider and receive public comment on the application of the DSI Training Center to be a contractual training provider**

Director Vickers confirmed that he has reviewed the application from the DSI (Dean Security & Investigations) Training Center and has concerns about their needs assessment. In item 1.01 of the application, DSI indicates that 3 intermediate size agencies do not have the manpower to utilize their instructors for the sole purpose of continuing education instruction for their officers. Director Vickers was concerned about the accuracy of this statement on the application. DSI also states that small town agencies in the north Texas area have few options for training for their

officers. Director Vickers noted that the north Texas area has a number of effective training entities. 1.02 of the application has a statement that every town in Texas struggles to find available and pertinent TCLEOSE courses. Directors Vickers noted that there are some areas in far west Texas and south Texas that struggle with training issues, but the statement in the application was "wide sweeping." Mr. Ray Bentley, representing DSI Training Center, addressed the Commission. He stated that he contacted several agencies in the Dallas metroplex area and they reported having problems obtaining training. Some were small departments. They can't afford to send officers off to training in another community. DSI would bring the training to the officers. He has 7 letters of commitment from agencies in the area to attend the training provided by DSI. Mr. Bentley contacted almost 20 agencies that want another training facility that is more centrally located, and want an instructor to come to their location. Mr. Bentley fielded questions from the Commission.

**Agenda item #10, Discuss Request for Waiver of TCLEOSE Rules 215.15 Enrollment Standards and 217.1 Minimum Standards for Initial Licensure for Barclay Vose and the Hunt County Sheriff's Office**

Sheriff Randy Meeks and Barclay Vose addressed the Commission reference the waiver request. Sheriff Meeks stated that Mr. Vose served 8 years in the Navy, receiving an honorable discharge and is applying for employment with the Hood County Sheriff's Office. Mr. Vose stated he was in law enforcement in the Navy and wants to continue in law enforcement. He is currently attending the academy at Hood County. Commissioner Villescas asked if a waiver is required prior to entering the academy and Director Davis confirmed that it is required.

**Agenda item #11, Discuss Request for Waiver of TCLEOSE Rules 215.15 Enrollment Standards and 217.1 Minimum Standards for Initial Licensure for Justin Bulls and the Coryell County Sheriff's Office**

Sheriff Johnny Burks and Justin Bulls addressed the Commission. Mr. Bulls has a Class B misdemeanor and received deferred adjudication. He attended the police academy and was hired as a peace officer. Mr. Bulls stated he revealed this information and provided court documents to the agencies that hired him. Later the misdemeanor was discovered and TCLEOSE cancelled Mr. Bulls' license. Mr. Bulls attorney, Bryon Barnhill also addressed the Commission. Commissioner Villescas noted that the waiver request does not include any disclosure information from the academy where Mr. Bulls received his training and that there are penalties for non-disclosure. He also expressed his concern about academies not following the rules of eligibility to enter an academy.

**Agenda item #12, Peace Officers' Memorial report**

Commissioner Hollingsworth noted that the Commission is still seeking contributions for the repair to the memorial. She encouraged individuals and agencies to look for creative ways to obtain additional funding. For example, if each licensed officer in Texas donated at least \$2, there would almost be enough funding for the repairs. Executive Director Braaten reported that over \$50,000 has been collected. Dr. Lovejoy encouraged all officers to help with the memorial funding.

**Agenda item #13, Discuss the final orders of amendments to existing TCLEOSE rules**

- a. 11-10-§217.7 Reporting the Appointment and Termination of a License
- b. 11-11-211.28 Responsibility of a Law Enforcement Agency to Report an Arrest
- c. 11-12-§211.27 Reporting Responsibilities of Individuals
- d. 11-13-§215.7 Training Provider Advisory Board
- e. 11-14-§217.1 Minimum Standards for Initial Licensure
- f. 11-15-§217.19 Reactivation of a License
- g. 11-16-§221.28 Advanced Instructor Proficiency
- h. 11-17-§223.19 Revocation of License
- i. 11-18-§211.26 Law Enforcement Agency Audits
- j. 11-20-§223.15 Suspension of License
- k. 11-21-§215.13 Risk Assessment
- l. 11-22-§215.5 Contractual Training
- m. 11-23-§211.1 Definitions

- n. 11-24-§221.9 Standardized Field Sobriety Testing (SFST) Proficiency
- o. 11-25-§223.20 Revocation of License for Constitutionally Elected Officials
- p. 11-26-§221.1 Proficiency Certificate Requirements

Dr. Messer addressed the Commission, noting that no comments had been received on any of the final orders and, if approved, will become effective on July 14, 2011.

**Agenda item #14, Discuss fee schedule to become effective 9-1-2011**

Dr. Messer noted that the following items will no longer be on the fee schedule:

- 1. SFST Practioner Proficiency – Final Order repealing, June 2011 Quarterly Meeting
- 2. SFST Practioner Proficiency (Renewal) – Final Order repealing, June 2011 Quarterly Meeting
- 3. Field Assistance Manual – incorporated into the Law Enforcement Administrator's Desk Reference
- 4. SFST Train the Trainer disc set – we no longer have this disc set, it can be requested from the National Highway Safety Administration (NHTSA)

Dr. Messer also noted that the following will be added:

- 1. Probation/Parole Agency Number \$100.00 consistency with agency number fee – lower than law enforcement agency due to the limited amount of information required for us to maintain
- 2. Licensee Certification Level Documentation \$35.00 Due to Rider 8 of the budget bill, we are to collect fees from peace officer and jailers who wish to have a paper certificate for Intermediate, Advanced, and Master. All fees in excess of \$286,212 will be transferred to the General Fund.
- 3. Proficiency Certificates – \$35.00 Due to Rider 3 of the budget bill, we are to collect fees for Basic Peace Officer, Basic Jailer, and all Telecommunicator certificates.
- 4. Cybercrime Investigator Proficiency \$35.00 new proficiency certificate
- 5. Proficiency Eligibility Research \$75.00 fee will offset research required to verify date certificate was earned
- 6. Open Records fee to allow charges for bulk requestors, to include subscription to TCLEDDS fees for certified copies and affidavits
- 7. Racial Profiling data \$35.00 consistency with the common cost of other CDs we offer
- 8. Processing of electronic documents through Departmental Reporting System fee consistent with paper processing fee for: Appointment of Licensee (L1); Pre Employment Separation Request (F5R); Separation of Licensee (F5); and Reports of training

The personal status report will note that the officer/jailer has been awarded a proficiency certificate, but the actual paper certificate will not be sent until the application and fee has been received.

The Basic proficiency certificate is not a part of Rider 8, but there will be a fee to issue the paper certificate.

**Agenda item #15, Adjourn**

The work session adjourned at 10:55 a.m.

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Dr. Johnny E. Lovejoy, II, Secretary  
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