

DEPARTMENT RISK MANAGEMENT PROGRAM

01.08.00.00

08.01.00 DEPARTMENT RISK MANAGEMENT PROGRAM

01.01 Risk Management Policy. The Department recognizes the following facts concerning the physical, human, fiscal and environmental resources of this agency:

1. As a result of conducting business, Department resources are routinely exposed to risks that can result in losses.
2. Said resources are valuable assets to the Department and the citizens of Texas.
3. Protection of Department resources, especially its employees, within the limits of the funds available is imperative.
4. Unless preventive and protective measures are taken, losses will occur.
5. A significant amount of time, money, resources and staff must be committed to manage, preserve, and protect Department resources in the most cost-effective manner.

01.02 Risk Management Goals

1. In carrying out the agency's business, the long-term goal is to minimize harm to the physical, human, fiscal and environmental resources of the agency, and to minimize the total cost of risk to the agency.
2. To minimize the harm and the cost of the risk, the Department shall:
 - a. attempt to routinely identify all significant known perils and risks to which the Department may be exposed;
 - b. develop and implement the most appropriate combination of loss control and risk financing techniques consistent with the activities of the Department, thereby reducing and controlling the adverse human and financial consequences of risk;
 - c. avoid unnecessary or unreasonable exposures to the extent practicable considering we are tasked with enforcing the law; and
 - d. take all reasonable and practical steps to prevent harmful events and losses.

01.03 Risk Management Authority and Responsibilities. The Director shall hire a risk manager who shall serve under the direction of the Assistant Human Resources Director. The risk manager shall be given the authority to, and shall be responsible for, the Department's Risk Management Program. The Risk Management Program includes planning, organizing, coordinating, implementing, monitoring and controlling.

The risk manager's authority and responsibilities shall not cross over into other functional areas of the Department but shall act in an advisory capacity to assist division chiefs and special section heads identify and control possible losses to departmental assets under their command.

08.02.00 COMPREHENSIVE DEPARTMENT SAFETY PROGRAM

02.01 Purpose

1. As unsafe acts and unsafe conditions are the primary cause of personal injury and property damage, the Department is dedicated to providing a safe working environment for all employees. The Comprehensive Department Safety Program is an integral part of departmental operations and includes all aspects of job safety and accident prevention. An effective program will reduce the number of injuries to personnel and will reduce the cost of operating Department vehicles in the form of vehicle damage, loss of time, and general maintenance, thereby contributing significantly to overall effective and economical operations.

2. The Department is charged with the responsibility of supervising traffic on public highways in such a way as will prevent injuries to persons and damage to property. The Comprehensive Department Safety Program, therefore, aims at doing for the Department the very thing which the Department is charged with doing for the public.

02.02 Comprehensive Department Safety Program Responsibility. The responsibility for oversight of the Comprehensive Department Safety Program of the Texas Department of Public Safety is delegated by the Director to the Chief of Administration and administered through the Health and Safety Section of the Human Resources Bureau. The Department Risk Manager is appointed by the Chief of Administration.

02.03 Administration of Program

1. The administration of this program is the responsibility of line commanders at every level and division chiefs. The staff work will be done by the Department Risk Manager and other staff personnel, but the basic responsibility for results rests on supervisors, managers, line commanders, and division chiefs.

2. The Department Risk Manager has the responsibility of keeping all employees aware of all aspects of safety practices with the objective of reducing accidents and preventing employee injuries, thereby reducing employee work time loss that results from injuries.

3. Each employee shall be responsible for assisting the Department in maintaining a safe working environment and shall report any unsafe act or condition through proper channels.

02.04 Safety Program Philosophy

1. The Texas Department of Public Safety was created by law to protect the lives and property of the people of the state of Texas and departmental employees. As unsafe conditions and unsafe acts are the primary causes of property damage and injuries, the Department is dedicated to providing safe equipment and safe conditions for employee performance. In turn, each employee must maintain safe equipment and safe conditions for work performance. Constant exposure to normal work procedures causes employees to disregard hazards of an unsafe act.

2. Unsafe acts are often committed by employees intentionally or without knowing that the act is unsafe. If an employee commits an unsafe act and does not know the act is unsafe, supervision and training have not properly prepared the person for effective performance. If the unsafe act is intentional and/or unjustified, sanctions may be imposed.

3. The Department recognizes that its law enforcement officers must be exposed to unsafe conditions because of work demands. Administrators, supervisors, and employees must follow safe work procedures as demonstrated in training and as prescribed in written manuals. Proper judgment should be exercised in the performance of duties. Following Department procedure and using proper judgment will keep property damage and injuries to minimal levels.

02.05 Safety Program Inspection. Inspectors of the Office of Audit and Inspection will include an evaluation of comprehensive safety program emphasis in every level of inspection, paying particular attention to the level of safety training and safety awareness existing in the various Department units.

02.06 Department Safety Committees

1. The Department Risk Management and Safety Committee will study and evaluate all Department safety practices and reported injuries and make appropriate recommendations to improve departmental safety. Committee members will be the Department Risk Manager (chairman) and the eight Regional Safety Coordinators (designated by the regional commander). The Department Risk Management and Safety Committee will meet at the call of the Department Risk Manager to discuss overall employee safety programs and to formulate plans to reduce employee injuries and to further the Department's goal of providing a safe workplace for employees to function within.

2. Selective evaluation of on-the-job injuries, including fleet accident injuries, will be initiated by the Risk Manager and the Regional Safety Coordinators so employees may know "why" and "how" injuries occur and steps can be taken to reduce the injury potential.

02.07 Headquarters Safety Program

1. The Headquarters Risk Management and Safety Committee in Austin will study overall safety practices and problems and make appropriate recommendations to improve headquarters safety. Committee members are selected as follows: Department Risk Manager, Chairman; one member each from Texas Highway Patrol, Criminal Law Enforcement, Fleet Operations, Laboratory, Emergency Management Service, Building Program Bureau, General Services Bureau, Information Management, Crime Records, Motor Carrier Bureau, Driver License Division, Training, and Office of General Counsel. The committee will meet quarterly. Committee recommendations and meeting minutes will be forwarded to the Chief of Administration for consideration.

2. Additional Duty Safety Officers (ADSOs) will be appointed by the bureau managers, as appropriate, and will assist the managers in creating a safe working environment and serve as liaison to the appropriate member of the Headquarters Risk Management and Safety Committee. Bureau managers shall inform the Risk Manager of their designated ADSO, and necessary training will be conducted by the Risk Manager.

3. Safety inspections of all buildings in the headquarters complex will be conducted semiannually in February and August. The Chief of Administration, Chief of Texas Highway Patrol, Chief of Criminal Law Enforcement, Chief of Driver License Division, Chief of Texas Rangers, and the head of each section/service/unit of the Director's staff will assign a person the responsibility of conducting a building inspection of all their respective areas located within the headquarters complex utilizing the "Building Inspection Checklist" (OAI-15) (Annex #3) and guidelines located in Annex #4. A copy of the checklist will be forwarded to the Risk Manager and the Building Program Bureau Manager. All employees will cooperate and assist the personnel assigned to conduct the inspections. The assigned personnel will report to the appropriate division chief or head of each section/service/unit of the Director's staff any deficiencies and corrective actions taken. It is the responsibility of the division chief or head of each section/service/unit of the Director's staff to ensure that deficiencies are corrected. The chiefs of each division or the head of each section/service/unit of the Director's staff will maintain the permanent file on each Building Inspection Checklist (OAI-15) of their respective areas. These files shall be made available upon request.

02.08 Regional Safety Program

1. **Goal.** The Regional Safety Committee's goal is to serve as a means of safety communications by creating and maintaining an active interest in all safety aspects and to encourage employees to become actively involved in developing and maintaining a safe work environment.

2. Structure

a. The chairman will be the Highway Patrol lieutenant designated by the regional commander.

b. The secretary will be the adjutant, unless the regional commander indicates a desire to have another member of the committee serve as secretary.

c. Members

1) Highway Patrol lieutenant, one from each subdistrict.

2) Driver License lieutenant, one from each district.

3) Commercial Vehicle Enforcement lieutenant.

4) CLE supervisor or designee.

5) Texas Ranger supervisor or designee.

6) Field Laboratory supervisor or designee.

7) Vehicle Inspection regional supervisor or designee.

8) Regional Communications supervisor or designee.

9) Any other member appointed by the regional commander or appointed by the committee chairman and approved by the regional commander.

3. Meetings

a. The Regional Safety Committee will meet semiannually in February and August to review reported on-the-job injuries, injuries to the public on Department property, fleet accident-related injuries, and to review building safety inspection reports. The committee's report will be forwarded to the regional commander, with a copy to the Risk Manager. The report will outline the cause of injury, if it can be determined, along with the committee's recommendation(s) or step(s) to reduce the injury potential, which may include additional training, if deemed necessary. If the committee has no recommendation(s), it should be so noted. If a safety hazard or a building deficiency is reported, the committee's report will include their recommendation(s) to correct the hazard or deficiency.

b. Upon receipt of the committee report, the regional commander shall cause the recommendations to be evaluated and provide the committee chair with a progress report prior to the next scheduled Regional Safety Committee Meeting.

4. Membership and Duties

a. **Highway Patrol lieutenant designated by the regional commander**

- 1) Serve as regional safety coordinator.
- 2) Serve as chairman of the Regional Safety Committee.
- 3) Coordinate training programs on job and employee safety for all Department employees within the region.
- 4) Maintain the regional commander's files on employee safety training and safety-related material.
- 5) Notify committee members of meeting dates, times, and locations.
- 6) Serve as a member of the Department Safety Committee.

b. Adjutant

- 1) Maintain files on Incident Report (HQ-12) (see Annex #1).
- 2) Serve as a member of the Regional Safety Committee.
- 3) Serve as secretary at semiannual Regional Safety Committee meetings, unless the regional commander indicates a desire to have another member of the committee serve as secretary.
- 4) Prepare summary of all Incident Reports for review by the Regional Safety Committee.
- 5) Coordinate the preparation of the meeting minutes for the chairman's signature.
- 6) Maintain a file of each Department-owned building and any other facility routinely occupied or used by Department personnel along with the inspection reports (OAI-15) (see Annex #3) for that building or facility. The file will also contain any reported deficiency or hazard, committee recommendations, and corrective actions.

c. Highway Patrol Lieutenant. Serve as field coordinator as described in section 5.

d. Driver License Lieutenant. Serve as field coordinator as described in section 5.

e. Commercial Vehicle Enforcement Lieutenant. Serve as liaison and spokesperson for Commercial Vehicle Enforcement Service.

f. CLE Supervisor. Serve as liaison and spokesperson for CLE services.

g. Texas Ranger Supervisor. Serve as liaison and spokesperson for the Texas Rangers.

h. Field Laboratory Supervisor

- 1) Serve as liaison and spokesperson for the laboratories within the region.
- 2) Ensure that the laboratories are inspected and present the inspection reports to the committee at the semiannual meetings.

i. Vehicle Inspection Regional Supervisor. Serve as liaison and spokesperson for Vehicle Inspection.

j. Regional Communications Supervisor. Serve as liaison and spokesperson for Communications.

5. Field Coordinator

a. Responsibility

1) Highway Patrol lieutenants are responsible for all facilities within their assigned subdistricts which are not utilized by Driver License personnel only. This includes all facilities whether owned by the Department, leased, or donated.

2) Driver License lieutenants are responsible for all facilities within their assigned districts that are staffed or utilized by Driver License personnel only. This includes all facilities whether owned by the Department, leased, or donated.

b. Duties

1) Coordinate semiannual field inspections.

2) Train field Additional Duty Safety Officers (ADSOs).

3) Review all Building Inspection Checklists (OAI-15) (Annex #3) and deliver the checklists to the Regional Safety Committee for review at the scheduled semiannual meetings.

6. Field Additional Duty Safety Officers (ADSOs) will be Highway Patrol and Driver License sergeants.

a. Duties

1) Make semiannual inspections of the following areas utilizing the Building Inspection Checklist (OAI-15) (Annex #3) and the inspection guidelines (Annex #4) and submit the inspection checklists to the appropriate field coordinator and the Building Program Bureau Manager in Austin not later than the 31st day of July and the 31st day of January each year.

a) Highway Patrol sergeants or their designees will inspect:

(1) All Department-owned buildings and any other facility routinely occupied or used by Department personnel in their respective sergeant areas.

(2) Parking areas around those buildings where the Department is responsible for the maintenance of the parking area.

(3) Areas where Department-owned bulk gasoline tanks are located.

(4) Firearm ranges utilized by Department personnel to conduct semiannual firearms qualifications.

(5) All offices utilized by Department personnel when those offices are located in the same building/facility as the Highway Patrol office.

(6) Any other area that a supervisor or field coordinator requests.

b) Driver License sergeant or designee will inspect:

(1) All Driver License offices in their respective sergeant area that are located in a building or facility separate from that of the Highway Patrol.

(2) Any other area that a supervisor or field coordinator requests.

02.09 Additional Duty Safety Officers (ADSOs)

1. Additional Duty Safety Officers will be responsible for:

a. Assisting supervisors and bureau managers in carrying out assigned duties and responsibilities for safety and health.

b. Serving as liaison between the workplace and the respective Safety Committee representative.

c. Conducting or arranging for safety orientation, refresher, and regular safety awareness training programs.

d. Assisting the supervisor in making regular safety inspections of physical conditions and work practices, and maintaining a record of those inspections.

e. Assisting the supervisor in investigating accidents and completing required reports, and in taking action to prevent recurrence.

f. Suggesting safety items for inclusion in the agenda of the respective Safety Committee meetings.

g. Taking appropriate actions to inform employees of safety program activities and encouraging full participation in these activities.

02.10 Training

1. **Highway Patrol Service.** The Highway Patrol Service will actively promote safety awareness and train regional personnel, including Criminal Law Enforcement, Driver License Division, Texas Rangers, and regional administrative personnel, in safety awareness and responsibilities of each employee in job safety.

2. **Department Safety Training.** Departmental safety training will be included in recruit schools and supervisory and managerial schools. In addition, in-service schools will receive departmental safety training on recommendation of training committees.

3. **Administrative Personnel.** Administrative personnel will strongly emphasize and promote overall departmental safety through training and actual participation. Administrative, command, supervisory, and operational level personnel will promote a general safety awareness among all employees so that each can be constantly aware of job safety for themselves and fellow employees.

02.11 Safety Practices Policy

1. The Department is dedicated to minimizing injuries to personnel and damage to property through sound safety practices. Although many employees are exposed to unsafe conditions because of their jobs, proper equipment, training in and use of proper safety techniques, and good judgment can reduce the hazards significantly.

2. Each supervisor is responsible for training assigned employees in proper techniques, observing work habits and conditions, and correcting unsafe acts and conditions when noted. This responsibility includes:

- a. Maintaining a safe working environment for all employees.
- b. Providing and maintaining safe equipment.
- c. Correcting unsafe work habits and procedures.
- d. Correcting, if possible, or reporting to their immediate supervisor any unsafe condition which could cause injury or death to any employee or nonemployee or cause property damage.
- e. Cooperating with field coordinator, Safety Committee member, or ADSO when safety inspections are conducted.
- f. Submitting to the Regional Safety Coordinator or Headquarters Safety Committee member, by memo, through proper channels, any recommendations on how to correct unsafe working conditions or improving normal working conditions, with a notation of corrective action already taken.

3. It is the responsibility of each employee to learn to operate assigned equipment properly, to use all safeguards available, to perform in a safe manner consistent with the requirements of the job, and to correct or report any unsafe condition. This responsibility includes:

- a. Following safe procedures as outlined in training classes, operations manuals, or counseling sessions.
- b. Reporting to the Regional Safety Coordinator or Headquarters Safety Committee member, by memo, through proper channels, any of the following with notations of corrective actions already taken:
 - 1) Unsafe equipment.
 - 2) Unsafe working conditions or procedures.
 - 3) Suggestions on how to improve working conditions.

4. Training committees and training staff are responsible for including safety training in basic, in-service, and other training courses, when applicable.

08.03.00 HAZARD COMMUNICATION (HAZCOM) PROGRAM

03.01 Policy. Department employees will conduct all work operations and activities in such a manner as to comply with the requirements of the Texas Hazard Communication Act, Chapter 502 of the Health and Safety Code, and Chapter 506, Public Employer Community Right-To-Know Act. It shall be the responsibility of each division chief to carry out the requirements of both Acts as it pertains to their division. All employees are expected to follow accepted safety procedures and manufacturer's recommendations in the handling of any hazardous chemical or material. It is the purpose of the Hazard Communication Program to ensure that all employees are informed of and understand any potential hazardous chemical exposures at Department work sites.

03.02 Notice To Employees. The "Notice to Employees" is required to be posted in the workplace, and informs employees of their rights and responsibilities. It is the responsibility of the building manager to ensure that this notice is

properly posted. The “Notice to Employees” poster is available from the Department’s Risk Manager in the Health and Safety Section of the Human Resources Bureau or the Texas Department of Health (TDH) Hazard Communication Branch.

03.03 Employee Training and Education

1. The Act requires two groups of employees to be properly trained.

a. All new employees must be trained concerning the hazardous chemicals used in their workplace prior to working with those chemicals.

b. When new hazardous chemicals are introduced into the workplace, or new hazards are recognized concerning certain chemicals, all employees that are exposed to those chemicals must receive training.

2. The training must include the following areas:

a. information on interpreting labels and material safety data sheets (MSDS) and the relationship between those two methods of hazard communication;

b. MSDS location and composition;

c. acute and chronic effects of chemical exposure;

d. safe handling of hazardous chemicals known to be present in the workplace and to which the employee may be exposed;

e. proper use of personal protective equipment;

f. necessary first-aid treatment to be used with respect to the hazardous chemicals to which the employees may be exposed; and

g. proper spill cleanup and proper disposal.

3. The employee’s first-line supervisor is responsible for conducting the training and maintaining a record of the training in the workplace. The supervisor shall keep a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Those records shall be maintained for at least five years. A copy of the training record shall be forwarded to the Department’s Risk Manager.

03.04 Labels

1. The Act requires that all chemicals be appropriately labeled at all times. Primary containers must be relabeled with at least the identity appearing on the MSDS, the pertinent physical and health hazards, including the organs that would be affected, and the manufacturer’s name and address.

2. Secondary containers must be relabeled with at least the identity appearing on the MSDS and appropriate hazard warnings. An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use by the employee who performs the transfer during one work shift. It is advisable to indicate what the contents of all containers are even if it is only water.

03.05 Material Safety Data Sheet MSDS

1. An MSDS is a document that contains the following information:

- a. Manufacturer's Name, Address and Telephone Numbers
- b. Hazardous Ingredients
- c. Physical and Chemical Characteristics
- d. Fire and Explosion Hazard Data
- e. Reactivity Data
- f. Health Hazards
- g. Safe Handling and Use
- h. Control Measures

2. MSDS sheets themselves must be:

- a. Prepared per OSHA standards.
- b. Prepared by the manufacturer or distributor and supplied to the purchaser.
- c. Maintained by the employer in the workplace where the chemical is used and readily available to employees. Upon request, MSDS sheets must be provided to the Director of the Texas Department of Health and the local fire chief.

3. Supervisor Responsibilities

- a. MSDSs must be maintained in a central location for easy access by the employees.
- b. MSDSs must be kept current and there must be one corresponding MSDS readily available for every hazardous chemical used or stored on the work site.
- c. When new hazardous substances are received at any work site, the supervisor of that area is to ensure that an MSDS is included. If not, the supervisor will contact either Purchasing in the Accounting and Budget Control Section or the original manufacturer to request an MSDS for the product.

4. Because MSDS and proper labeling are required on all hazardous chemicals, employees are not allowed to bring hazardous chemicals from home to use at work. Hazardous chemicals used at work must be purchased in accordance with Chapter 10 of the General Manual. This policy does not extend to items for personal use such as nail polish remover.

03.06 Workplace Chemical List

1. The Department shall compile and maintain a workplace chemical list that contains the identity used on the MSDS and container label and the work area in which the hazardous chemical is normally present in excess of 55 gallons or 500 pounds or in excess of an amount that the TDH determines by rule for certain highly toxic or dangerous chemicals.

2. The supervisor shall ensure the workplace chemical list is readily available to the employees and ensure all employees are aware the workplace chemical list exists.

3. The supervisor of each section affected shall update the workplace chemical list as necessary, but at least by December 31 of each year. A copy shall be forwarded to the Department's Risk Manager.

4. The supervisor shall maintain a workplace chemical list for at least 30 years.

03.07 Texas Tier Two Report. The Public Employer Community Right-To-Know Act, Chapter 506 of the Health and Safety Code, requires the Department to compile a list of all hazardous chemicals present in the workplace in excess of certain quantities and submit this list annually to TDH. Currently, petroleum fuels are the only chemicals maintained by the Department that must be reported under this section. The Building Program Bureau will be responsible for submitting this report annually. A copy of the report will be maintained by the Building Program Bureau and the Risk Manager for at least 30 years.

03.08 Reporting Fatalities and Injuries. The supervisor shall immediately verbally notify the Department's Risk Manager of an employee accident that directly or indirectly involves chemical exposure that involves asphyxiation, and that is fatal to one or more employees, or that results in the hospitalization of five or more employees.

03.09 Additional Information. For additional information concerning the Texas Hazard Communication Act and the Public Employer Community Right-To-Know Act, employees should contact:

Department of Public Safety - Risk Manager
Health and Safety Section
Phone (512) 424-2725
Fax (512) 424-2739

Texas Department of Health
Hazard Communication Branch
1100 West 49th Street
Austin, TX 78756
Phone (512) 834-6600

08.04.00 USE OF TOBACCO

04.01 The use of tobacco products are prohibited in:

1. All buildings owned or managed by the Department, and
2. Any vehicle designated as a pool vehicle.

"Tobacco products" includes e-cigarettes and any similar product.

04.02 Members of the Department of Public Safety shall refrain from the use of tobacco when in direct official contact with the public when such use might be considered objectionable.

04.03 The use of tobacco products is only permitted at 'Designated Smoking / Tobacco Use Areas' at facilities owned or managed by the Department.

04.04 The building manager of each property owned or managed by the Department shall designate at least one designated smoking / tobacco use area for each facility and provide waste receptacles for tobacco products only in those designated areas. At least one designated smoking / tobacco use area must be accessible for public use.

04.05 Division management is responsible for the strict enforcement of this policy.

04.06 Department employees shall comply with:

1. Section 48.01 of the Penal Code regarding Smoking Tobacco, and
2. Section 365.012, of the Health and Safety Code regarding Illegal Dumping.
3. Any local ordinances or rules governing the use of tobacco in all public buildings.

04.07 The building manager of each property owned or managed by the Department shall:

1. Place signs at each public entrance providing notification of 08.04.01 (1).
2. Place signs at the designated smoking / tobacco use area indicating such designation.
3. Place signs at the designated smoking area indicating the Penalty for Littering.

08.05.00 FLEET SAFETY PROGRAM

05.01 Purpose: The purpose of the fleet safety program is to: minimize injury and property damage, accurately and efficiently investigate fleet crashes, identify driving behavior trends that contribute to crashes, implement both proactive and reactive driving training, decrease the liability to the Department, create incentives for good driving behavior, and create consequences for unsafe or dangerous driving behavior.

05.02 Policy: It is the policy of this agency to take an active role in reducing the number of fleet crashes involving Department personnel. In doing so, the Department can reduce the number of injuries and the cost of operating Department vehicles due to vehicle damage. Department administrators should devote a sufficient amount of time to ensure employees receive proper driver training and immediately correct deficiencies or unsafe driver behavior exhibited by employees under their supervision. An employee involved in a fleet collision or incident shall immediately notify their immediate supervisor of the occurrence. The Texas Highway Patrol Division in the area where the event occurs will be contacted to make the determination if the occurrence should be classified as a fleet collision or fleet incident.

1. Definitions.

A. Fleet Collision: The Department shall investigate all crashes involving Department vehicles as defined by the Texas Transportation Code; Section 550.041:

1. A motor vehicle collision resulting in injury to or death of a person or property damage to an apparent extent of at least \$1,000.

2. This section does not apply to:

- a. A collision which occurs on a privately owned residential parking area;

- b. A collision which occurs on a privately owned parking lot where a fee is charged for parking or storing a vehicle;
- c. A collision which occurs during the course of Department approved training in a pre-defined training area; or
- d. An intentional act.

3. Damage to the apparent extent of at least \$1,000 will be determined by the estimated cost to repair the damage from a reputable repair facility not the actual cost of repairs.

B. Fleet Incident: Any damage to a Department vehicle or damage to other property by a Department vehicle that does not meet the definition of a fleet collision.

C. Department drivers: Any Department employee who operates a Department owned vehicle a minimum of 2,000 miles per year.

D. Department Fleet Safety Coordinator: A member of the Department appointed by the Director. The Coordinator has the responsibility to:

1. Receive appeals from Department drivers regarding the consequences assessed by this section due to a collision resulting in negative contributing factors.
2. Convene appeal boards and hearings as needed to determine the status of an appeal.

E. State Crash Reconstruction Team Leader: A member of the Texas Highway Patrol Division appointed by the Assistant Director of the Texas Highway Patrol. The Team Leader has the responsibility to:

1. Receive, review, and approve all fleet crash investigations. In order to ensure the accuracy and completeness of all investigations, the State Crash Reconstruction Team Leader may request, through the appropriate chain of command, additional information as needed.
2. Maintain the files of fleet crash investigations in compliance with the Department's records retention policy.
3. Report the results of fleet crash investigations to the affected Department driver, Human Resources, the Assistant Director of the Texas Highway Patrol, ETR, the Regional Commander (if applicable), and the Assistant Director of the Department (if applicable) driver involved.
4. Provide a summary of fleet crash trends to Education, Training, and Research Bureau on an annual basis.

F. Negligent Contributing Factor: A contributing factor indicated on a crash report for a Department driver that is attributed to a driver behavior and is a violation of the Transportation Code. Factors shown under "May Have Contributed" would not qualify under this definition.

2. Fleet Safety Program Components. The Departments Fleet Safety Program is made up of four primary components: investigation, training, awards, and consequences.

A. Investigation:

1. **Fleet Collisions:** all Department fleet collisions will be investigated by the Texas Highway Patrol Division, regardless of whether another law enforcement agency has conducted an original investigation. All fleet collisions will be submitted, through the Highway Patrol Service chain of command, to the State Crash Reconstruction Team for review and approval in order to ensure that a thorough and accurate investigation has been completed. The Texas Highway Patrol will establish and publish procedures as necessary to ensure consistent and efficient processes to report fleet collisions. All Fleet Collisions require the completion of an HQ-12 Incident Report to be forwarded to the Texas Highway Patrol Division with the required documents as established by the THP Assistant Director.

2. **Fleet Incidents:** all Department fleet incidents will be reported through the chain of command utilizing the current Department incident reporting form or process to the Regional Commander (or Assistant Director if not applicable). Incidents indicating that corrective action and/or training are necessary will be identified and recommended through the chain of command to the Regional Commander (or Assistant Director if not applicable) for determination. All fleet incidents require the completion of an HQ-12 Incident Report which will be completed as per General Manual, Chapter 8, 08.03.

3. Texas Highway Patrol division personnel will determine if a fleet occurrence is classified as a Fleet Collision or a Fleet Incident. In the event that an occurrence has been incorrectly reported as a Fleet Incident, the Regional Commander (Assistant Director if not applicable) or his designee will direct that a Fleet Collision investigation be conducted.

B. Training:

1. The primary responsibility for training Department drivers rests with the Education, Training, and Research Bureau (ETR).

2. ETR will develop appropriate driving training in order to proactively prepare and maintain proficiency of Department drivers.

3. ETR will develop reactive training initiatives to correct driver deficiencies identified in the fleet crash investigation. This remedial driving training will be categorized according to the type of driving circumstance causing the fleet collision and may take into account a driver's fleet driving history.

4. Every immediate supervisor is responsible for monitoring and evaluating the fleet driving behavior of their personnel and to providing sufficient driving training.

C. Awards: Human Resources Bureau (HR) will maintain Department driver records and manage the Department's fleet driving awards program.

1. HR will document the investigation results, awards earned, training received, and any corrective action taken into each employee's personnel file.

2. Department supervisors and members from ETR will be allowed access to fleet driving history in order to adequately address corrective action and training requirements.

3. Fleet Driver Awards

a. Department drivers will earn a fleet driver award for every 12 months of safe driving without a negligent contributing factor collision. The fiscal year, September 1st to August 31st, will be used as the period for award determination. Partial years will not be used for consideration. The awards will consist of:

(1) a safe driving coffee cup with the appropriate year in 5 year increments,

increments, and

(2) a lapel pin or recognition breast bar with the appropriate year in 5 year

(3) administrative leave in the following increments:

# Years Safe Driving	# Hours Admin Leave Earned per Year
1-5 years	8
6-10 years	12
11-15 years	16
16-20 years	24
21 + years	32

NOTE: Administrative leave is subject to provisions provided in statute. Employees may not exceed the maximum administrative leave allowed per fiscal year.

- b. When a Department driver has a fleet collision with a negligent contributing factor attributed to their driving, the employee will lose one year of eligibility for award consideration and will not be eligible to receive any awards for that fiscal year.
- c. HR may identify additional awards and implement them with the approval of the Assistant Director of Administration.

D. Consequences of Contributing Factor Crashes: for each fleet collision in which a negligent contributing factor has been determined for a department driver, appropriate consequences for the driver will be assessed.

1. Assessment of consequences.

a. The Department shall assess the consequences as indicated in this chapter.

b. Upon final review of fleet crashes, the State Crash Reconstruction Team Leader will determine negligent contributing factors with the approval of the Texas Highway Patrol Assistant Director or his designee.

c. The State Crash Team Leader will provide written notification of the results to the affected Department driver, Human Resources, ETR, the affected Department driver's Regional Commander (if applicable), and that driver's Assistant Director (if applicable).

d. It is the responsibility of the immediate supervisor to ensure that the appropriate assessment of consequences has been completed.

e. Other actions may be initiated at the discretion of the Assistant Director (or Regional Commander if not applicable) in the Department driver's chain of command in addition to or in lieu of the consequences provided under the Fleet Safety Program.

f. In order to provide sufficient time and opportunity for proactive driving training, the assessment of consequences will not begin until September 1, 2013.

2. Consequences:

Any Consecutive 5 Year Period		Minimum Consequences
# of Fleet Crashes with Negative Contributing Factors	0	Award Earned
	1	Verbal or Written Counseling Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History
	2	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History
	3	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History Not eligible for promotion, merit, or pay raise for 6 months
	4	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History Not eligible for commissioned secondary employment, promotion, merit, or pay raise for 12 months
	5	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History Not eligible for commissioned secondary employment, promotion, merit, or pay raise for 12 months Possible Disciplinary Action up to and including termination
	6 +	Written Counseling Documentation on Annual Evaluation Remedial Driving Training – As Determined by ETR Specific to the Collision and Driver History Not eligible for commissioned secondary employment, promotion, merit, or pay raise for 12 months Removed from duties requiring the operation of a fleet vehicle Possible Disciplinary Action up to and including termination

3. **Appeals.** Employees wishing to appeal either the results of the fleet collision investigation or the consequences assessed must submit a request to appeal in writing through their chain of command to the Assistant Director of the Texas Highway Patrol. Appeals of the results of the fleet collision investigation will be directed to the Deputy Assistant Director of THP. Appeals of the minimum consequences assessed from this section will be directed to the Fleet Safety Coordinator.

A. Appeal of Fleet Investigation.

1. The appeal board for this process will be appointed by the THP Assistant Director. The board will include a THP Major, a THP Sergeant, a member from the State Crash Reconstruction Team, a member from the District Crash Reconstruction Team, and a non-commissioned Department Fleet Driver. Each member will be appointed to serve until replaced. Alternate board members may be appointed and serve at the discretion of the THP Assistant Director.

2. The THP Major on the board will serve as the chairman for this process.

3. The appeal board will make their recommendation to the THP Assistant

Director.

4. The THP Assistant Director will determine the final ruling of the appeal and provide this finding to the affected employee, Human Resources, ETR, the Assistant Director of the Texas Highway Patrol, the Regional Commander (if applicable), and the Assistant Director of the affected employee's division.

B. Appeal of the Consequences.

1. The appeal board for this process consists of the Fleet Safety Coordinator and a quorum of at least 7 members consisting of a member from each of the following divisions: THP, CID, Rangers, ICT, LESD, RSD, Administration, DL, and TDEM. Division Assistant Director's will designate the board members from their division. Each board member will serve until replaced by that division Assistant Director.

2. The Fleet Safety Coordinator will serve as the chairman. The chairman will convene the board at least once per quarter to handle appeals in a timely manner. If there are no pending appeals, the Fleet Safety Coordinator may postpone a quarterly meeting until needed.

3. Division designees shall be employed, at a minimum, at the rank of Major/Deputy Administrator.

4. The decision of the board will be based on a consensus of the members for each case appealed. The board's decision will be reported to the affected employee, the affected employee's Regional Commander (if applicable), Assistant Director of the affected employee's division, and Human Resources.

5. Appeals under this section apply only to the consequences specifically listed in this section. Appeals of any disciplinary action initiated or assessed will follow the process outlined in the General Manual, Chapter 7A.

08.07.00 DRUG-FREE WORKPLACE

07.01 Drug-Free Workplace Policy

1. **Purpose and Scope.** The purpose of the Department's Drug-Free Workplace policy is to set forth objectives, policies, and procedures to achieve a drug-free workplace for its employees in compliance with Title 41, Section 702, United States Code, and the Texas Workers' Compensation Act. The Department as a result of its legal and moral responsibilities, as well as the sensitive nature of its work, has a compelling obligation to provide a workplace free of drugs and alcohol for its employees. This policy applies to the manufacture, distribution, dispensation, possession, or use of a controlled substance, alcohol, or inhalant by employees. For purposes of this policy, "inhalant" means a volatile chemical under Chapter 484 of the Texas Health and Safety Code or aerosol paint under Section 485.001 of the Texas Health and Safety Code.

Employees are prohibited from injecting, inhaling, ingesting or otherwise administering into their body any substance in violation of the terms of the Controlled Substances Act, Title 21, United States Code or the Texas Controlled Substances Act, Chapter 481 Texas Health and Safety Code. This prohibition includes conduct that occurs outside of Texas regardless of the laws or the prosecutorial standards of the jurisdiction in which the conduct occurred.

The Department recognizes alcoholism and chemical dependency as illnesses which can be effectively treated. Alcoholism and chemical dependency are illnesses in which a person's continued consumption of any alcoholic beverage or intoxicating chemical definitely and repeatedly interferes with his/her work situation and/or health. The Department's concern with regard to alcoholism and/or chemical dependency is not solely limited to its effects on the

member's performance, attendance, or general conduct. It is concerned with the general well-being of each individual as well.

2. Federal Requirements

a. If an employee is engaged in the performance of a federal grant, the employee shall notify his or her chain of command of any criminal drug statute arrest and/or conviction for any offense involving or related in any way to drug, alcohol, inhalant, or controlled substance abuse no later than five days after such arrest or conviction.

b. This Department shall, within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of such criminal drug statute conviction, notify the appropriate federal agency of such conviction.

c. It is incumbent on the supervisor of an employee who has been convicted for any violation of a criminal drug statute to require that employee to report to the Staff Psychologist and to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, local health, law enforcement, or other appropriate agency. This requirement shall be imposed on the employee within 30 days after receiving notice of the conviction. This requirement is in addition to any disciplinary action taken pursuant to Chapter 7A of the General Manual. Complaint and grievance procedures initiated as a result of criminal drug statute convictions shall be given priority consideration to ensure that any sanctions taken against the employee be imposed as expeditiously as possible.

3. Drug and Alcohol Services of the Employee Assistance Program

a. The Department recognizes that various personal problems may detract from an employee's effectiveness. Whenever an employee's performance, attendance, on-the-job behavior, or conduct is poor or below standard, sound management practices dictate corrective actions or termination. All levels of supervision shall be alert to unsatisfactory or still acceptable but deteriorating job performance related to alcohol or chemical abuse by a subordinate.

Supervisors and coworkers should refrain from practices that foster the concealment of an employee's alcohol or chemical abuse as such practice generally serves only to prolong the problem.

The Department operates an Employee Assistance Program under the direction of the Staff Psychologist, as part of a comprehensive stress management program as described in 05.63.00. The program staff includes trained employee volunteers, known as Employee Assistance Specialists, and mental health professional staff, known as Employee Assistance Counselors. The Employee Assistance Staff are available to assist employees by providing confidential assessment and referrals to appropriate professional services such as drug and alcohol counseling and treatment/rehabilitative facilities. Employee Assistance Staff are also available to provide follow-up and case management services to employees during the rehabilitation period to track their progress and encourage successful completion of the program. The Employee Assistance Staff provide training and consultation to supervisors and employees regarding behavioral signs that might indicate the presence of a substance abuse problem in an employee.

b. An employee with an alcohol or chemical dependency problem will not jeopardize his or her job security by requesting or utilizing professional services such as counseling or treatment programs. In fact, self-referral of employees who suspect that they may have a drinking or substance abuse problem is strongly encouraged.

c. Should an employee require time off work for treatment or counseling, necessary arrangements should be made with supervisors in order to utilize accrued sick leave or vacation entitlement or apply for sick leave pool time. The employee is always responsible for accepting help and restoring and maintaining his or her job performance at acceptable levels.

d. The cost of treatment, counseling, or rehabilitation resulting from referrals by the Staff Psychologist, Employee Assistance Specialist, or Employee Assistance Counselor will be the responsibility of the employee. Employees should contact their medical insurance providers directly to determine available coverage and referral or per certification requirements, if any.

e. The Staff Psychologist, Employee Assistance Specialist, or Employee Assistance Counselor shall maintain only such records as are necessary to carry out his or her duties. To the maximum extent permitted by law, all medical and/or rehabilitation records concerning the employee's alcohol or chemical dependency problem, if any, are confidential and may be disclosed only upon written consent of the employee or in accordance with any applicable laws.

4. **Drug-Free Awareness Program.** The Department will provide each employee a copy of the Department's drug-free workplace policy. Each new employee will be provided a copy of the Department's drug-free workplace policy on or before the first day of employment. Education literature regarding the dangers of drug and alcohol abuse as well as information to increase awareness of possible signs of drug or alcohol problems, will be provided to any employee requesting them by the Psychological Services Bureau, the Employee Assistance Specialists and the Employee Assistance Counselors.

5. **Comment.** Nothing in the administrative policies and procedures expressed here shall be construed to abridge or override existing agency policies relating to hiring, disciplining, or discharging employees. The guidelines regarding drug-free workplace and the employee assistance program are designed to support the ongoing safe and successful accomplishment of the agency's mandate.

07.02 Mandatory Drug Testing Program Purpose Statement. The Department of Public Safety is charged with the responsibility of providing leadership, coordination and delivery of law enforcement and public safety related regulatory service. The safety and protection of the people and property within the State of Texas is our primary mission. Department employees often work outside the traditional workplace/office environment and their duties are often carried out with minimal direct supervision in potentially hazardous situations. Many Department employees also handle highly sensitive information the misuse or improper release of which could affect the safety of the Department employees and could damage the ability of the Department to carry out its mission to protect the public. It is important that the Department assure that such employees do not suffer from drug related impaired perception and judgment, therefore, the Department adopts this mandatory drug testing program.

1. **Scope.** The Department of Public Safety has established a Mandatory Drug Testing Program including Random Selection drug testing, For Cause drug testing and Critical Incident drug testing.

2. **Definitions.**

a. **Approved emergency situation** - occurs after testing notification of the employee by the supervisor and refers to required enforcement action, accident, illness or other situations outside the control of the employee.

b. **Approved excused absence** - refers to situations known to the supervisor prior to the notification of the employee of a test that prohibit an employee from submitting a sample, such as:

- 1) An employee's inability to leave a work assignment due to a critical need.

- 2) A safety or hazardous situation involving the employee or public.
- 3) A required appearance in court.
- 4) A previously authorized training away from the duty station or approved leave.
- 5) An employee's inability due to being in a travel status out of state.

c. **Chain of custody** - refers to the method of documenting the handling of a specimen, from collection through final testing procedures, to suitable storage of the specimen. Signed and dated forms and sealed containers are used in this process.

d. **Collection site** - a medical facility, doctor's office or hospital authorized by the Department to collect employee urine and blood specimens to be used in laboratory analysis. A collection site shall be authorized through the drug testing laboratory contract and certified by the federal Department of Health and Human Services.

e. **Collection site personnel** - A person employed by a medical facility that assists and instructs Department employees with specimen collection at the collection site. Collection site personnel are to carry out trained functions that include receiving and making the initial examination of the urine specimen and the proper packaging and sealing of the specimen in front of the employee. This person is also trained in appropriate chain of custody procedures.

f. **Confirmatory test** - the second laboratory test, used to confirm non-negative test results (above cut-off levels) from an initial testing test. Gas Chromatography/Mass Spectrometry (GCMS) shall be the technique used for the confirmatory test.

g. **Contract Laboratory** - An independent scientific Laboratory under contract to the Department that meets federal Department of Health and Human Services guidelines for drug/metabolite testing.

h. **Critical Incident** - an event in which an employee injures another to the point of causing a life threatening injury or death.

i. **Cut-off level** - an established concentration, usually measured in nanograms per milliliter (ng/ml), used to determine whether a specimen is non-negative (at or above the cut-off level) or negative (below the cut-off level) for the target drug.

j. **Drug(s)** - encompasses dangerous drugs, controlled substances or volatile chemical inhalants as those terms are defined by the Health and Safety Code; alcohol, as defined by the Alcoholic Beverage Code; and over the counter medications.

k. **Initial test** - the first laboratory test used in the drug testing protocol, also known as a screening presumptive or preliminary test. Initial tests are rapid and less expensive, but not as accurate as the confirmatory test. An Immunoassay test shall be the technique used for the initial testing.

l. **Medical Review Officer** - a certified, currently licensed physician who reviews all laboratories tests results that are non-negative or suspicious. The MRO uses his/her knowledge of alternative medical explanations and best medical judgment in deciding whether to report a positive or negative test result to the Department.

m. **Negative test** - test results that indicate no finding of drugs above the cut-off level or test certified by the MRO as having the presence of a drug at or above the cut-off level for which there is a valid or acceptable authorization or explanation or in the case of alcohol testing a result below .01.

n. **Non-negative test** - test results that indicate the presence of a drug at or above the cut-off level that must be sent to the MRO for investigation.

o. **Positive test** - test certified by the MRO as having the presence of a drug at or above the cut-off level for which there is not valid or acceptable authorization or explanation or in the case of alcohol testing a result at or above .01.

p. **Program coordinator** - a program coordinator will be assigned from the Human Resources Bureau to coordinate the objectives of the Mandatory Drug Testing Program.

q. **Proper identification** - a valid Texas Driver License or Department-issued identification card containing a photograph.

r. **Random selection drug testing** - all employees required to submit to random selection drug testing have an equal opportunity to be selected and the method used for selection will not differentiate between those previously selected and those who were not.

s. **Reasonable suspicion** - reasonable suspicion is based upon specific, objective, and articulable facts and any rational inferences from those facts that would lead a reasonable person to suspect an employee has used drugs in violation of Department policy.

t. **Safety sensitive positions** - positions within the Department which require:

1) the use or operation of firearms, motor vehicles, aircraft, heavy equipment or hazardous chemicals; or

2) acts or procedures that can be considered potentially hazardous.

u. **Security sensitive position** - positions of public trust within the Department that do not work in a setting with direct supervision capable of finding and rectifying mistakes or misconduct before harm occurs, including:

1) the responsibility for maintaining work place integrity through program or financial auditing, program administration or agency management;

2) access to monies or property belonging to the agency or over which the agency has a propriety or fiduciary responsibility prior to such time that these items are placed in inventory or otherwise catalogued in a manner where audit control has been established;

3) access to computer databases containing information the loss or damage of which would adversely affect the ability of the agency to carry out its public mission;

4) the direct execution of regulatory services or functions as trainers, inspectors, auditors or testers;

5) having access to information the improper release of which could reasonably lead to:

a) public ridicule or scorn of an employee or citizen, if the release of such information is also unlawful;

b) the hindrance of or damage to a criminal investigation or prosecution; or

c) the placing of a person in danger of injury or death.

v. **Split-sample method** - when an employee provides a specimen for testing, the specimen is split into two collection bottles. One collection bottle remains sealed and is analyzed only if an employee requests a re-test by an independent laboratory.

w. **Suspicious test** - a test that the collection site or laboratory personnel believe might have been tampered with or otherwise compromised.

x. **Unobserved setting** - the specimen collection procedures for drug testing which calls for the urine specimen to be collected in a private setting without an observer present.

y. **Under observation** - when the collection site personnel believe that the urine specimen has been tampered with or otherwise compromised, the specimen is then collected with an observer present. The observer must be of the same sex as the employee.

3. Random Selection Process

a. Random selection drug testing is required of designated positions. Safety and security sensitive positions that will be required to participate in the program will be designated by the Director.

b. Employees to be tested will be randomly selected by computer from a list of all employees subject to testing.

c. The percentage of employees tested quarterly will be determined by the Director. Records of the employees tested will be maintained in the Human Resources Bureau.

4. Random Selection Drug Testing

a. Employee selection and notification.

1) A list of persons to be tested will be randomly selected by computer.

2) The first line supervisor of each employee on the list will be notified by the Program Coordinator through the receipt of the form HR-175, Notification to Report for Random Drug Testing.

b. Duties of the supervisor.

1) The supervisor of the employee to be tested will arrange for a urine specimen collection and test at the nearest approved collection site. The scheduled date of the test shall be within five (5) days of receiving notification of the test requirement. After checking the selected employee's schedule, the supervisor will contact the appropriate test site, schedule the test and inform the contracted facility of the supervisor's name and phone number and the name and position title of the person to be tested. The supervisor must verify that the collection site has Chain of Custody (COC) forms for DPS. If the collection site does not have COC forms for DPS, contact the Program Coordinator to assist in locating one. The COC form must be obtained prior to notifying your employee.

2) The selection of the employee for testing shall be kept confidential until the employee is notified. This process should not be delegated to a non-supervisor. At that time, the supervisor will serve the selected employee with the HR-175 and give instructions to the employee about reporting for testing and completion of the form, including instructing the employee to ensure that the collection site uses the confirmation number on the HR-175 as a billing reference. The supervisor will require the affected employee to report to the collection site immediately.

3) The supervisor will schedule the affected employee for specimen collection during the employee's regular working hours whenever possible.

4) The supervisor shall cause the employee to return the completed HR-175 to the supervisor immediately after testing and forward the form to the Program Coordinator.

5) The supervisor will not inform an employee of the testing order if the supervisor knows the employee will be unable to report for testing within 5 days because of an approved excused absence. The supervisor will complete the approved excused absence portion of the HR-175 and return it to the Program Coordinator with a copy to your Division Chief/Special Section Head.

6) If an employee fails to report to the collection site or refuses to submit to testing after receiving a notification order, the supervisor shall complete the appropriate section of the HR-175 to notify the Program Coordinator and advise if the test will be rescheduled within 24 hours and if the failure to report was due to:

- a) an approved emergency situation; or
- b) an unexcused absence or refusal to report on the part of the employee.

c. **Rescheduling of a random test.** When an employee has an approved excused absence or approved emergency where the employee could not be rescheduled for a specimen collection appointment within 24 hours, the test will be rescheduled by the Program Coordinator within the following six months. Testing procedures on a rescheduled test will be the same as if it were an original notification.

d. Nothing in this section should be construed as a limit on appropriate disciplinary action for failure to comply with the provisions of the Mandatory Drug Testing Program.

e. Nothing in this section should be construed as a limit on the Department's ability to order the testing of other employees or on other occasions where testing is warranted under the circumstances and such testing is in compliance with applicable law.

5. For Cause Drug Testing

a. All Department employees in safety sensitive or security sensitive positions shall be subject to drug testing, whenever there is reasonable suspicion to believe that an employee has used drugs, including alcohol, in violation of Department policy, including policy on reporting to duty mentally and physically fit.

b. Circumstances constituting "reasonable suspicion" may include, but are not limited to:

1) An on-the-job accident or occurrence where there is evidence that the accident or occurrence was possibly the result of the employee's actions or inaction and/or the employee exhibited behavior consistent with the use of drugs.

2) Direct observation employee behavior indicating that the employee may be unable to perform his/her job or might pose a threat to the safety or health of the employee, fellow employees or the general public, if such conduct could reasonably be attributed to drug abuse.

3) Presence of the physical symptoms of the use of drugs including, but not limited to slurred speech, bloodshot eyes, unsteady gait, abnormal pupil size and reaction.

4) A conclusion based on good information produced by a credible and reliable person.

5) Other physical on-the-job evidence of drug use by an employee.

c. An employee required to provide a urine specimen as a result of a For Cause circumstance shall be required to follow the collection procedures as described in Section 7, except that if the employee is unable to provide the urine specimen immediately, a blood specimen shall be collected at an approved collection site. An investigator or supervisor ordering a For Cause test will serve the employee with form HR-176, For Cause Alcohol/Drug Testing Order. In the case of a urine test the investigator or supervisor will accompany the employee to the test site and confirm the collection of the sample and the completion of the HR-176 by site personnel. The investigator or supervisor will forward the completed HR-176 to the Program Coordinator immediately.

d. If during normal office hours, the investigator or supervisor will contact the Program Coordinator for information about the closest test site and to receive a Confirmation Number for billing purposes. After normal office hours, a purchase order will be used. Site location information will be available on the Mandatory Drug Testing Program webpage.

e. In addition to the drugs listed in Section 9, the Department can order a test for any other drug.

f. When a breath specimen as a result of a For Cause circumstance shall be required, the following procedures shall be used:

1) An employee can be ordered to submit a For Cause Alcohol Test by a Department employee assigned to investigate an accident/incident or by a supervisor when meeting the requirements outlined above and the employee shall be required to submit to testing. An investigator or supervisor ordering a For Cause test will serve the employee with form HR-176, For Cause Alcohol/Drug Testing Order. The investigator ordering a For Cause test will immediately notify the first-line supervisor of the employee being ordered to testing.

2) The Breath Test will be used as the primary testing procedure for suspected alcohol use. The tests will be run by a commissioned officer or a Breath Alcohol Testing employee using a portable breath analysis device on the Federal Register Conforming Product List, such as the Intoximeter. Intoxilyzers and similar non-portable instruments can be used, but only if set up specifically for employment testing. If a Breath Test cannot be obtained promptly, a blood test will be used.

3) The employee will be administered a breath test using the standard procedures for such tests. Intoxilyzers and similar non-portable instruments can only be used if the tests are run by a commissioned officer or a Breath Alcohol Testing employee who is a DPS certified breath alcohol test operator.

4) If the test detects any level at .01 or higher then the test will be certified as a positive result.

5) If the machine prints results, the original and two copies will be made of each test results. One will be retained by the test operator, one will be given to the supervisor/investigator ordering the test and one will be forwarded to the Program Coordinator.

6) If the machine does not print results, the test operator will document the results by completing the appropriate portion of form HR-176.

7) The supervisor/investigator ordering the test will immediately forward the completed HR-176 to the Program Coordinator.

g. Nothing in this section should be construed as a limit on the Department's ability to order the testing of other employees or on other occasions where testing is warranted under the circumstances and such testing is in compliance with applicable law.

6. Critical Incident Testing.

a. The Department will require drug and alcohol testing after the following incidents:

1) A firearms discharge on duty, during enforcement action or involving a Department weapon, which results in human injury or death;

2) A fleet accident in which the employee injures another to the point of causing a life threatening injury or death;

3) An event in which a commissioned employee while performing a law enforcement function injures another to the point causing a life threatening injury or death;

4) An on duty event in which a non-commissioned employee injures another to the point causing a life threatening injury or death.

b. The collection procedure for Critical Incident testing will be the same as that used in For Cause testing except that form HR-177, Critical Incident Alcohol/Drug Testing Order, will be used.

c. Nothing in this section should be construed as a limit on the Department's ability to order the testing of other employees or on other occasions where testing is warranted under the circumstances and such testing is in compliance with applicable law.

7. General Specimen Collection Procedures. Any employee who is required to submit a urine specimen or sample shall be sent to an approved collection site and the following procedures shall be used:

a. Upon arrival at the approved collection site, the employee will sign in and provide proper identification to site collection personnel.

b. The employee will fill out a Chain of Custody form or other like required paperwork provided by the collection site personnel.

c. The employee shall list any legally ingested substances and may voluntarily list any illegally ingested substances taken with the past 30 days which they believe might be detected in the testing process.

d. The employee will receive a specimen container and be escorted to the collection area by collection site personnel. All outer garments such as jackets, coats, etc., and all items such as handbags and packages will be left outside the collection area.

e. The employee will be allowed to provide a urine specimen in a private, unobserved setting [Exception: when the collection site personnel believe that the specimen has been tampered with or otherwise compromised].

f. If the collection site personnel believe that the test has been tampered with or otherwise compromised, the Program Coordinator will be notified immediately of the suspicious test. The employee shall be required to submit to a second specimen "under observation" and both specimens will be tested.

g. Insufficient Urine Specimen Procedures:

1) In the event the employee is unable to provide a minimum of 45 milliliters (approx. 1.5 oz.) of urine for a specimen, the employee will be asked to drink not more than 24 ounces of fluids and wait up to two (2) hours in order to provide a sufficient urine sample.

2) If after two (2) hours a sufficient specimen cannot be provided, a blood specimen shall be immediately given.

h. Once the specimen is provided, the tested employee shall keep possession of the specimen until custody can be transferred to the collection site personnel.

i. If the specimen is adequate, collection site personnel will divide the specimen into a split specimen container and seal the containers in the presence of the tested employee.

j. The employee and the collection site personnel will verify that all chain of custody procedures, within their control, are followed. The specimen will then be mailed or otherwise delivered by the collection center to an authorized contract laboratory for analysis.

k. The employee, investigator or supervisor will present the appropriate Testing Notification Order to the site personnel and have it completed.

8. Blood Collection Procedure. Any employee who is required to submit a blood specimen or sample shall be sent to an approved collection site and the following procedures shall be used:

a. Upon arrival at the approved collection site, the employee will sign in and provide proper identification to site collection personnel.

b. The employee will fill out a Chain of Custody form or other like paperwork provided by the collection site personnel.

c. The employee shall list any legally ingested substances and may voluntarily list any illegally ingested substances taken within the past 30 days which they believe might be detected in the testing process.

d. The collection site personnel will draw, store and label the blood as outlined in sub-section (h) below.

e. Once the specimen is provided, it shall remain in sight of the employee until verification of proper labeling by the collection site personnel.

f. The employee and the collection site personnel will verify that all chain of custody procedures, within their control, are followed and the specimen will then be sent by the collection center to an authorized contract laboratory for analysis.

g. The employee, investigator or supervisor will present the appropriate Testing Notification Order to the site personnel and have it completed.

h. The collection site personnel will draw blood using the following guidelines:

1) The personnel drawing the blood shall be a doctor, nurse or clinical laboratory technician.

2) The site will be a hospital, doctor's office or other appropriate site.

3) No alcohol, ether, acetone, or other volatile reducing agent should be used as a sterilizing agent for the syringe, tubes, needle, or employee being tested. An aqueous solution of bichloride of mercury is recommended as the sterilization agent.

4) At least 10 c.c. of blood shall be drawn and preserved. The blood shall be preserved in two sterile tubes with at least 5 c.c. of blood in each tube. A dry anti-coagulant should be added to the blood.

5) The employee submitting the sample should be allowed to witness the preparing, labeling and filling of the blood tubes by the collection site personnel so that the employee can sign the chain of custody form.

9. Laboratory Analysis. The Department will contract with a provider Laboratory that is certified or approved by the federal Department of Health and Human Services. The contracted Laboratory shall be capable of performing the initial test and the confirmation test as well as collecting and analyzing blood specimens.

a. Initial test will be an Immunoassay test. Should a specimen test non-negative during the initial testing, the specimen shall be analyzed in a confirmation test.

b. Confirmation test will be a Gas Chromatography/Mass Spectrometry (GCMS) test.

c. The following initial and confirmatory cut-off levels shall be used to determine whether the test result is non-negative or negative for the drugs or metabolites listed:

Drug/Metabolite(s)	Initial Level	Confirmatory Level
Marihuana Metabolites	50 ng/ml	15 (THCOOH)
Cocaine Metabolites	300 ng/ml	150 (Benzoyloecgonine)
Amphetamines	1000 ng/ml	500 (Amphetamines)
Barbiturates	300 ng/ml	200 (Barbiturates)
Opiates	2000 ng/ml	2000 (Morphine/Codeine)
Phencyclidine	25 ng/ml	25 (Phencyclidine)

d. Both the initial and the confirmatory test will be conducted on the same part of the split sample. If a negative test is reported, both samples will be destroyed/discarded. If a non-negative test result is reported the second sample will be stored in such a way as to allow for later testing.

e. The Laboratory will report any negative test results to the designated Program Coordinator. Non-negative and suspicious test results will be reported by the Laboratory to the Medical Review Officer.

f. In addition to the drugs listed above, the Laboratory will test for any other drug when specifically requested by the Department using the acceptable industry standards for their detection and confirmation.

10. Medical Review Officer

a. The MRO shall review the results on all non-negative or suspicious drug tests to ensure accuracy, completeness and confidentiality.

b. When the drug testing Laboratory reports a non-negative or suspicious test result, the MRO will conduct an investigation that includes:

1) contacting the employee by telephone within one (1) business day of receiving the test result,

2) obtaining statements from the employee concerning any legal drug usage that could have resulted in a non-negative test result, and

3) verifying employee's statements by contacting physicians, dentists, pharmacies, or other witnesses.

c. Within three (3) business days after receiving the non-negative or suspicious test results from the testing laboratory, the MRO shall report test results to the Program Coordinator and discuss/explain the reports with the Program Coordinator on all non-negative or suspicious tests. This contract should be done in a manner that ensures the security and confidentiality of the information.

d. The MRO shall, upon request of the Department, provide expert testimony for court or Departmental administrative hearings.

11. Program Coordination and Administration. Duties of the Program Coordinator include:

a. Use a computer program to generate a list of employees for random testing and generate Notification Orders as appropriate.

b. Document all aspects of the Drug Testing program, including the maintenance of a list of all employees tested and results of all tests.

c. Obtain confirmation from the supervisor once the employee has submitted a urine/blood/breath specimen.

d. Act as the Department liaison with the Collection Sites, the Medical Review Officer and the Testing Laboratory.

e. Notify supervisors of negative test results of employees.

f. Notify the Division Chief of positive and suspicious test results.

g. Collect budget numbers for all testing from the area employing the tested employee and process all billing paperwork and submit it to Accounting and Budget Control for payment.

h. Conduct overall coordination of the Drug Testing Program.

12. Confidentiality of Test Results

a. The test results from the Department's Mandatory Drug Testing Program will not be filed in the employee's personnel file unless it is referenced as part of an administrative complaint investigation or disciplinary action.

b. All statistical reports created or maintained for the overall Mandatory Drug Testing Program will not contain any information with regard to the identification of an employee.

c. Information obtained as a result of the Department's Mandatory Drug Testing Program may be subject to release under the provisions of the Public Information Act.

13. Responsibility for Reporting Legal Drug Use

a. If the medically approved and appropriate use of a prescription or over-the-counter drug adversely affects any employee's work performance or the safety of the employee or others, the employee must bring this fact to the attention of his/her immediate supervisor.

b. The immediate supervisor will then consult with the chain of command, and make a determination whether to question the employee's fitness for duty, and whether to limit, suspend or modify the employee's work activity, or otherwise reasonably accommodate such adverse effect.

c. As part of this process, the employee may be requested to provide medical documentation of his/her ability to safely and effectively perform the essential functions of the position.

d. Any information about the employee's medical condition obtained by a supervisor or manager is confidential, and will be shared only on a need to know basis.

e. Employees subjected to the passive inhalation of a drug (e.g., marijuana) must immediately notify the supervisor on duty.

1) The supervisor should document in writing by means of a memorandum:

- a) The substance the employee was exposed to;
- b) The period of exposure; and
- c) A brief statement explaining the necessity for exposure.

2) The memorandum will be forwarded to the Program Coordinator, who will maintain this documentation for use if needed in the drug testing program.

14. **Forms.** Forms can be found in Annex #8.

07.03 Prohibited Conduct. For the purposes of this policy, "on duty" is defined as an employee's work hours (including a meal period unless the employee is not returning to work); attendance at classes or conferences during the instructional program, if such classes are paid for by the Department or attended while on the Department payroll; attendance at any public function while speaking or attending as an assigned representative of the agency; and, participation in any DPS-sponsored function.

1. The unlawful manufacture, distribution, dispensing, possession, or use of a drug by an employee is prohibited on the premises of or while operating any Department property or at any other time whether the employee is on or off duty.

2. No employee while on or off duty shall consume alcohol while in uniform.

3. No employee shall report for duty, emergency or otherwise, or operate a Department vehicle or other motor-driven equipment when his or her mental or physical faculties are impaired through the use of legally ingested drugs. Except as provided in subsection d, no employee shall report for duty, emergency or otherwise, or operate a Department vehicle or other motor-driven equipment when evidence of his or her consumption of alcohol may be detected. The use or possession of the employee's own prescription drug while on duty is permissible only if the use or possession is pursuant to the physician's directives. If the medically approved and appropriate use of a prescription drug or over-the-counter drug adversely affects the employee's work performance or the safety of the employee or others, the Department reserves the right to limit, suspend, or modify the employee's work activity, or otherwise reasonably accommodate such adverse effect or risk.

4. The ingestion of alcohol while on duty is permitted for legitimate law enforcement purposes (as stated in the State Appropriations Act) with prior supervisory approval, or where it is not practicable to get such supervisory approval and the reasonable possibility exists that the mission of the employee will be compromised if he or she does not ingest alcohol. Limited ingestion of alcohol for the purpose of accomplishing the employee's mission is not a violation of this policy, provided it does not preclude him or her from performing assigned duties in a safe manner. The foregoing provisions will not relieve the employee from the obligation to operate a vehicle with safety and in a manner consistent with state law and Departmental policy.

Circumstances may require an employee to return to on-duty status after having ingested alcohol and while it may still be detected on his or her breath. Prior supervisory approval should be obtained where practicable, but under no circumstances shall an employee return to duty while impaired and where public safety would be endangered.

5. Submitting a contaminated or false specimen or otherwise tampering with the drug testing process is prohibited.

6. An employee may not refuse to take a drug test, or fail to appear at the collection site in accordance with this policy, or otherwise refuse to cooperate with the collection site personnel, the Medical Review Officer, a Law Enforcement Officer, or a Department employee with responsibilities under the Mandatory Drug Testing Program.

Employees who are required by this policy to submit to testing in a situation which involves allegations that could be criminal in nature, should be advised that since they are required to fully cooperate, information obtained from the employee's test is information which the courts have held is not generally admissible against that individual in a criminal prosecution arising out of the same set of facts. This is in accordance with the Supreme Court decision in the case of *Garrity v. State of New Jersey* [87 S.Ct 616 (1967)]. The administrative and criminal investigations will be conducted separately.

07.04 Sustained Violations. If a violation of this policy occurs disciplinary procedures will be instituted in accordance with the provisions of General Manual, Chapter 7A. If a violator is not discharged, in addition to any action taken, the violator may be required to participate in the Rehabilitation Program for treatment of a continuing drug problem.

07.05 Rehabilitation Program

1. **Participation Requirements.** An employee participating in the Rehabilitation Program will be placed on leave of absence. Whether or not it is paid or unpaid will depend on available leave balances. (If applicable, the provisions of the FMLA will be followed). An employee participating in the Rehabilitation Program must abide by the following:

a. Actively participate in an appropriate alcohol or other drug treatment program of a licensed, accredited treatment facility and follow all rules, guidelines and recommendations of that program or facility, including but not limited to after-care recommendations;

b. Complete the program, not reject any treatment or recommendation of the program or facility and not leave or discontinue the treatment program before being properly discharged; and

c. Sign all necessary authorizations and consents to allow the treatment facility to furnish copies of the employee's treatment records to the Staff Psychologist so that the Department can monitor the employee's treatment program.

2. **Return to Work.** An employee who seeks to return to work while undergoing or after completing treatment must sign and fully comply with a written agreement setting out the special conditions for the employee's return, including but not limited to the following:

a. The employee must submit to a drug test and obtain a negative result before returning to work;

b. the Staff Psychologist, in consultation with any treatment program staff, must certify that the employee has successfully completed the program requirements; and

c. The employee must agree to unscheduled, periodic drug tests for a period of not less than one (1) year.

08.08.00 TEXAS TORT CLAIMS

08.01 General Administrative Responsibilities. The Office of the Attorney General has the ultimate responsibility and authority to represent the state's interest in claims originating under the Texas Tort Act.

The Department's role is to provide thorough and accurate incident reports to protect the interests of the employee, the Department, and the state.

Claims for damages under these provisions will be processed through Department channels to the state Office of the Attorney General.

08.02 Liability. The Department of Public Safety may be responsible for personal injuries and death incurred through negligence of DPS employees in the maximum amounts of \$250,000 for any individual, \$500,000 for any single accident, and up to \$100,000 for any single occurrence for injury to or destruction of property. The Department is liable for personal injuries or death or damage to or destruction of property caused by the negligence or wrongful act or omission of any officer or employee acting within the scope of his employment, arising from the operation or use of a motor vehicle, or caused from some condition or some use of tangible property, real or personal, under the same circumstances which would exist if a private person were liable in accordance with the laws of this state.

08.03 Incident Report (HQ-12). When Department personnel, acting within the scope of their employment, are involved in incidents where property of a nonemployee is damaged or a nonemployee is killed or injured, an Incident Report, HQ-12, (see Annex #1), will be executed. This report will provide a written record of the incident and will inform the Director, the Office of General Counsel, and the Office of the Attorney General of the possibility of legal action against the employee, the Department, or the State of Texas.

Personal injury for the purposes of this report is defined as:

1. Killed.

2. Incapacitating Injury. Severe injury that prevents continuation of normal activities. Includes broken or distorted limbs, internal injuries, crushed chest, etc.

3. Non-incapacitating Injury. Evident injury such as bruises, abrasions, minor lacerations which do not incapacitate.

4. Possible Injury. Injury which is claimed, reported or indicated by behavior but without visible wounds. Includes limping, momentary unconsciousness or complaint of pain.

This report will not replace any other required report.

08.04 Procedure. Any employee involved in or witness to an incident involving nonemployees that might fall within the scope of this section will adhere to the following guidelines.

1. Report the available details to his/her immediate supervisor as soon as practicable.

2. Make no statements or comments to those involved other than to exchange identifying information or to give factual information to any investigating officer.

08.05 Supervisor's Responsibility. The immediate supervisor of the involved employee(s) will submit a teletype to line commanders and to the Director as soon as practicable relating the basic incident information. The supervisor will investigate, or cause the incident to be investigated, and be responsible for completion of the HQ-12 report and submission of the report through channels to the division chief.

The report should be filled out completely. The section "Employee's Description of the Incident" should contain a statement from the involved employee(s). If an employee has previously given a written statement to an investigator regarding the incident, as in the case of an employee involved in a shooting, a copy of that statement should be attached in lieu of the employee completing an additional statement. A notation of "see attached statement" should be made in this section. Any other reports, witness statements, or supplemental information should be included. The reports will be submitted as follows:

1. Original, after review by division chief, to the Office of General Counsel. The Office of General Counsel will maintain Department files on all HQ-12's submitted to report nonemployee injury or property damage.

2. Copy retained by adjutant for review by Regional Safety Committee for incidents that occur in the field. After review by safety committee, adjutant will maintain regional file copy.

3. On incidents that occur at the headquarters complex in Austin the copy will be submitted to the Risk Manager for review by the Headquarters Safety Committee.

08.06 Follow-Up Investigations. In any incident resulting in death or serious bodily injury, or in any incident deemed appropriate by the Director or Assistant Director, an investigation may be conducted by Internal Affairs. Investigation by Internal Affairs will be submitted to the Director's Office, who will forward a copy to the employee's service commander for his review and recommendations which will then be submitted back through channels to the Director's Office.

08.07 Office of General Counsel. The Office of General Counsel will be responsible for coordinating the Department's response to any claim for injury or damage. Any Department member who receives contact pertaining to a tort claim or possible tort claim should refer all questions concerning procedure, liability, or payment of the claim to the Office of General Counsel. Any correspondence regarding a claim should be forwarded to the Office of General Counsel promptly.

An evaluation of the claim file and relevant law will be performed by the Office of General Counsel on each claim. The Office of General Counsel will review each claim file for completeness prior to forwarding the file to the Office of the Attorney General for processing.

08.09.00 WORKERS' COMPENSATION

The Texas Workers' Compensation Act provides income, medical, and death benefits to employees in Texas for injuries sustained in the course and scope of their employment. The state agency charged with the enforcement of the act is the Texas Workers' Compensation Commission TWCC. Under the act, most employers carry insurance which pays out benefits for work-related injuries according to the provisions of the act. A special section of the act requires that the State of Texas be self-insured and provides that the Attorney General set up a division in his office to administer the act for state employees. The act mandates that the Director of the Workers' Compensation Division of the Office of the Attorney General shall act as the insurer in administering the provisions of the act for state employees. State agencies are the employer of record and are entitled to certain rights and have specific responsibilities under the Texas Workers' Compensation Act. State agencies are also subject to certain administrative penalties that may be assessed for failure to comply with the Texas Workers' Compensation Act. The Department is required under rules issued by the Office of the Attorney General to cooperate with their agency in providing information necessary for the carrying out of their responsibilities under the act.

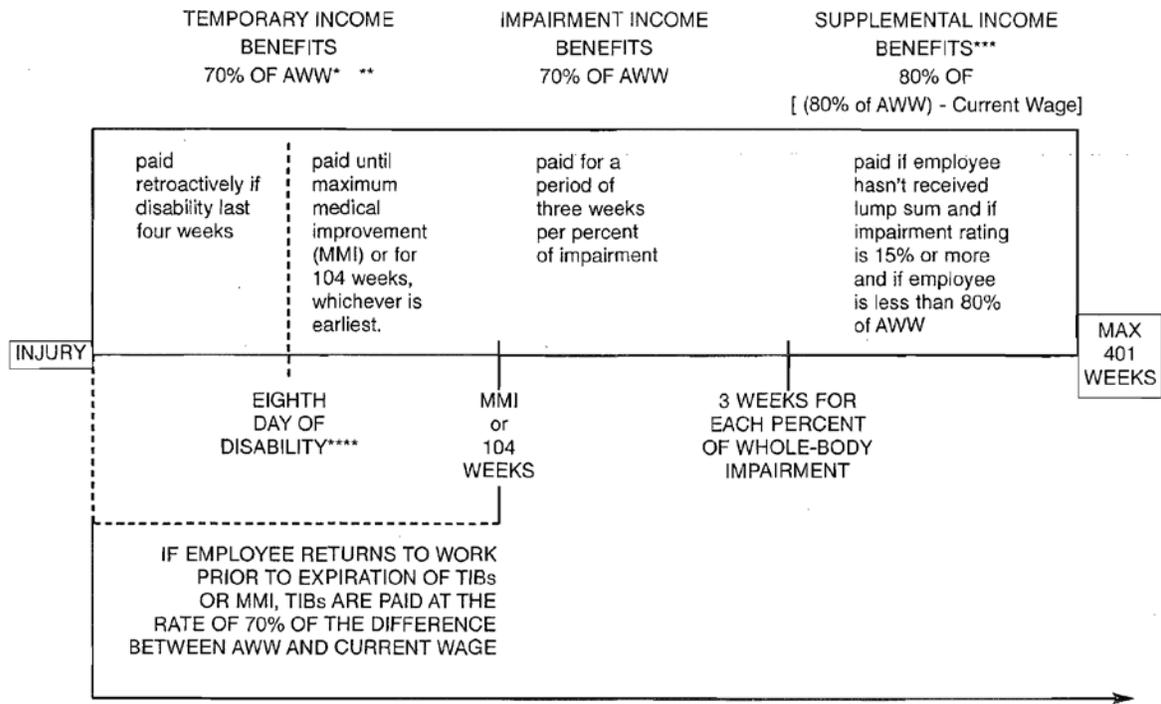
Any questions regarding a claim for benefits under Workers' Compensation should be made to the Office of the Attorney General, as the office that administers the payment of all claims for state employees. The Texas Workers' Compensation Commission can provide employees with information concerning their rights under the act. If an employee is unable to get information from or is having problems with the Office of the Attorney General, the employee may call the Texas Workers' Compensation Commission and ask to speak with an OMBUDSMAN. Questions concerning the reporting requirements found in the General Manual should be directed to the Health and Safety Section of the Human Resources Bureau.

An employee must notify the employer of his injury within 30 days after the date of a compensable injury, in order to be eligible for compensation under the act. The employee must also file a claim for benefits with the Texas Workers' Compensation Commission within one year from the date of the compensable injury. A compensable injury is an injury sustained in the course and scope of employment and for which the employee may receive medical or income benefits as described below. A compensable injury would also include an occupational disease. The employee shall complete form TWCC-41, Employee's Notice of Injury or Occupational Disease and Claim for Compensation (see Annex #13), and file the report with the Texas Workers' Compensation Commission within one year after the date of injury or if an occupational disease, within one year after the date the employee knew or should have known that the disease was related to the employment.

An employee has a right under the act to dispute the decisions of the Office of the Attorney General concerning a claim. The employee can request a Benefit Review Conference by submitting form TWCC-45, Request for Setting a Benefits Review Conference (see Annex #14), to the Texas Workers' Compensation Commission's local field office. Any questions about an employee's rights concerning a claim should be directed to an OMBUDSMAN with the Texas Workers' Compensation Commission.

09.01 Income Benefits. An employee injured in the course and scope of employment with the Department is entitled to receive income benefits if the injury results in a disability that causes an employee to be unable to perform his/her job for more than one week. The amount of benefits varies depending on the type, duration, or extent of injury and the wage of the employee at the time of injury. Below is a chart that summarizes income benefits under the Workers' Compensation Act:

INCOME BENEFITS SUMMARY



LIFETIME INCOME BENEFITS

75% of AWW, with 3% annual increase

(paid until employee's death for loss or permanent loss of use of hands, feet, eyes and other conditions described in the Workers' Compensation Act)

- * Average Weekly Wage (AWW) is calculated by adding the injured employee's weekly wages for the 13 weeks immediately prior to the injury and dividing by 13
- ** For employees who earn less than \$8.50 an hour. Temporary Income Benefits (TIBs) equal 75% for the first 26 weeks, if amount does not exceed the employee's previous year's earnings.
- *** Supplemental Income Benefits (SIBs) are calculated quarterly, paid monthly. All other income benefits are paid weekly.
- **** Disability is defined as the loss or reduction of wages because of a work-related injury.

09.02 Medical Benefits. An employee is entitled to payment for all health care arising out of an injury covered under the Workers' Compensation Act that is reasonably required to:

1. Cure or relieve the effects from the injury;
2. Promote recovery from the injury; or
3. Enhance the ability of the employee to return to or retain employment after the injury.

All medical treatment must be approved or recommended by the employee's treating doctor, except in emergencies.

1. **Treating Doctor.** The employee may make a choice of the doctor who will be responsible for treatment. After the employee's initial choice of doctor, the employee may only change the treating doctor with the permission of the Commission. The request for authority to change the treating doctor should be submitted on form TWCC-53, Request to Change Doctor (see Annex #17), and should include the reasons for the change. (If a medical necessity exists, a request can be made by telephone.)

The following do not constitute a change in the employee's treating doctor:

- a. Treatment by another doctor during a medical emergency;
- b. Referral by the treating doctor;
- c. Services ancillary to surgery;
- d. A change necessitated by the doctor's unavailability to provide medical care;
- e. A change of doctor necessitated by a change in residence of the employee; or
- f. A second opinion on the appropriateness of the diagnosis or treatment.

2. Preauthorization of Medical Treatment. Some medical treatment requires preapproval by the Attorney General's Office (except in emergencies). The health care treatments and services requiring preauthorization are:

- a. All nonemergency hospitalizations, ambulatory surgical center care, and transfer between facilities;
- b. Psychiatric or psychological therapy or testing except as part of work hardening;
- c. All external and implantable bone growth stimulators;
- d. All chemonucleolysis, facet, or trigger point injections;
- e. All nonemergency myelograms, discograms, or surface electromyograms;
- f. Unless otherwise specified, repeat individual diagnostic study, with fee established in the current Medical Fee Guideline of greater than \$350 or DOP (documentation of procedure). (Diagnostic study is defined as any test used to help establish or exclude the presence of disease/injury in symptomatic persons; the test can help determine a diagnosis, screen for specific diseases/injury, guide the management of an established disease/injury, and help formulate a prognosis.)
- g. Video fluoroscopy;
- h. Radiation therapy or chemotherapy;
- i. Biofeedback except as a part of work hardening;
- j. Physical therapy or occupational therapy beyond eight weeks of treatment;
- k. Work hardening, in excess of six weeks limited to a one-time two-week extension;
- l. Work conditioning, in excess of four weeks limited to a one-time two-week extension.
- m. All durable medical equipment in excess of \$500 per item and all TENS units;
- n. Nursing home, convalescent, residential, and all home health care services and treatments;
- o. Pain clinics, chemical dependency clinics, or weight loss clinics; and

p. All nonemergency dental service, including reconstructive dental care or dental appliances.

3. Failure to Follow Rules. If the rules on preapproval of a change in the treating doctor or the preauthorization of the above treatments and services are not followed, it may result in the refusal of payment for the medical services performed in violation of the rules. Normally the medical care provider makes the request for preauthorization. In order to assist in maintaining compliance with the rules, an employee may want to inquire whether a doctor takes workers' compensation claims prior to selecting that doctor as the treating doctor for the employee's injury.

08.10.00 WORK-RELATED EXPOSURE TO INFECTIOUS DISEASE

10.01 Employees Exposed to Communicable Diseases. Because the Department recognizes that apprehension and controversy exist regarding infectious diseases such as AIDS and Hepatitis B, the following guidelines and precautions have been developed to assist in minimizing the exposure to and contagion from these diseases.

1. Guidelines for Suspected Work-Related Exposures

a. **Puncture or Open Wound Exposure.** An employee who sustains a possible percutaneous through the skin exposure via contact with a needle, knife, or other sharp object or has an open wound exposed to suspected infectious material should: 1) encourage the wound to bleed by application of pressure, 2) wash the area thoroughly with soap and water, and 3) seek medical attention if necessary.

b. **Mucous Membrane Exposure.** Disease may also be contacted through exposure of mucous membrane (eyes, mouth, or nose) to infection. If this occurs, rinse the area thoroughly.

c. Report the incident to your first-line supervisor and consider completing and submitting to the Health and Safety Section form (LS-12), Notification of Exposure to Infectious Disease (see Annex #9).

2. General Infection Control Guidelines. All personnel who are in regular contact with the public should consider the possibility that anyone with whom they come in contact may be a carrier of AIDS, Hepatitis B, or other infectious disease. In addition, any employee who comes in contact with an incarcerated or recently released TDCJ inmate should also consider that the individual might be infected with AIDS or Hepatitis B. Therefore, to avoid infection through the bodily fluids of another, the precautions specified below should be enforced routinely, regardless of whether the persons involved are known to be infected with a contagious disease.

a. All wet or dry blood and body fluids should be considered infectious.

b. Because good personal hygiene is the best protection against infectious diseases, hands should be frequently washed with soap and water. Hands and skin that become accidentally contaminated with blood or body fluids should be thoroughly washed immediately.

c. While on duty, keep all wounds carefully protected with a bandage which provides complete and impermeable coverage. A soiled bandage should be changed.

d. Disposable latex gloves should be worn when handling blood, body fluids, or any object exposed to contamination; gloves should be disposed of after each use. Additional protective equipment including gowns, masks, and eye protection should be utilized during the performance of procedures which may involve extensive exposure to potentially infectious blood or body fluids. This includes the handling and transportation of bodies and laboratory specimens and the conducting of postmortem examinations.

e. Contaminated surfaces and objects should be cleaned using household bleach or chemical germicides that are approved for use as “hospital disinfectants” and are tuberculocidal.

f. Constantly be alert for sharp objects. When handling hypodermic needles, knives, razors, broken glass, nails, broken metal, or any other sharp object, use the utmost care to prevent a cut or puncture of the skin. All such objects should be placed in puncture-resistant containers.

g. Spill kits will be placed in strategic locations at headquarters and at all regional, district, and area offices at a minimum. Spill kits should also be placed in offices where Department personnel are in contact with the general public. These spill kits shall contain 4 rags; 2 pairs of gloves; 15 paper towels; 1 red plastic contamination bag; 1 bottle of disinfectant (Super Wex-Cel solution or its equivalent); and 1 large, clear plastic bag. Service commanders will purchase and distribute the kits and see that they are properly maintained to ensure reliability.

3. Guidelines for Field Law Enforcement and Crime Scene Personnel

a. Special masks are to be used when administering car diopulmonary resuscitation (CPR). It is the officer’s responsibility to see that the mask is disinfected after each use or thrown away. Masks are available through General Stores.

b. Precautionary measures should always be exercised to avoid being bitten or assaulted during arrests.

c. During searches, hands should not be placed in areas where one is unable to see such as underneath seats or inside hidden compartments.

d. When searching a suspect, a cautionary pat search should be conducted first. If possible, the suspect should be directed to empty his/her pockets and socks.

e. Appropriate personal protective equipment including gloves, coverall gowns, face masks, and footwear protectors should be used when conducting crime scene searches when appropriate.

f. Blood and body fluid stained clothing and objects must be air dried, placed in paper (NOT PLASTIC) bags, and labeled properly. If evidence is collected from a possibly infected person, the package should be labeled “Caution: Possibly Infectious Material.”

g. Any contaminated reports, labels, or evidence tags should be destroyed after the information has been copied on clean forms.

h. Latex gloves, surgical masks, and protective eye wear should be used when collecting or handling liquid blood, body fluids, dried blood, blood contaminated evidence, or deceased bodies.

i. Latex gloves, eye-coverage, surgical masks, and a gown should be worn when attending an autopsy.

j. If possible, use only disposable items at a crime scene when infectious blood is present. All nondisposable items must be decontaminated after each use.

k. Spill kits, as previously described, will be placed in all THP and DLD marked units, and all Ranger and CLE sergeant units. The placement of kits in all other Department vehicles is desirable but not mandatory.

4. Crime Laboratory Guidelines

- a. Food and beverages are prohibited in workbench areas.
- b. Evidence should only be handled in work areas. Laboratory tests should not be performed in office areas.
- c. Access to work areas should be restricted when hazardous evidence is being analyzed. When handling hazardous evidence, the analyst should avoid making or receiving phone calls.
- d. Possibly infectious biological evidence transported to court should be packaged and handled in such a manner as to minimize risks to witnesses, court officials, juries, and others present in the courtroom. Prosecutors and judges, if possible, should be informed of the risks before evidence is introduced or handled in the courtroom.

10.02 Peace Officers Exposed Through Contact with Persons Requiring Hospitalization

1. Report of Contact to Hospital. It is the responsibility of the peace officer to notify the receiving hospital if he/she has been potentially exposed to the blood and/or body fluids of a patient carrying a communicable disease. A form entitled "Report of Possible Exposure of Transporter" shall be completed and submitted to the receiving hospital. The form will be made available to the peace officer upon arrival at the hospital, usually from the admitting room. The peace officer shall not contact the receiving hospital regarding the diagnosis of the communicable disease of the hospitalized individual. This would not preclude the peace officer from obtaining information necessary to a traffic or criminal investigation (examples: injury code, blood alcohol level, etc.).

2. Hospital and Health Authority Responsibilities. It is the responsibility of the receiving hospital to notify the health authority when a transporter has been unknowingly exposed to a patient with a reportable disease. The health authority, in turn, must notify the director of the employing agency.

3. Department Responsibilities. The Department shall then provide the employee with the name and phone number of the health authority staff member, who will further advise the employee about medical treatment.

10.03 AIDS Education. Education is the cornerstone of efforts to prevent transmission of AIDS. In order to keep Department personnel informed all employees will receive a pamphlet concerning AIDS and the workplace on a yearly basis. The pamphlet will be distributed in the employee's pay envelope. All new employees will receive the pamphlet on their first day of employment. Headquarters Personnel Bureau and the regional adjutants will ensure the pamphlet is furnished to all new employees. The Health and Safety Section will coordinate the printing and distribution of the pamphlet.

10.04 Information on AIDS. HIV destroys a person's defenses against infection. These defenses are known as the immune system. Once infected with HIV, a person may remain without symptoms for a long period of time, but is able to infect others through sexual or direct blood contact. As the disease progresses, the immune system can become so weakened that a person may eventually develop life-threatening infections and cancers. AIDS (Acquired Immunodeficiency Syndrome) is the final stage of HIV infection.

HIV virus can be passed from the infected person to others through sexual or direct blood contact:

1. By having sex with an infected person (through semen, vaginal fluids, blood);
2. By sharing needles and syringes with an infected person;
3. By an infected woman to her baby during pregnancy or possibly breast-feeding; or

4. By infected blood or blood products (a very low risk factor since the implementation of blood screening procedures in 1985).

HIV is transmitted through certain behaviors, not through the environment. Except through these behaviors, it is difficult to be infected by this fragile blood-borne virus.

Current scientific and medical technology has determined that there is no risk of HIV/AIDS transmission in the normal work setting. Routine daily encounters with coworkers and agency clients pose no risk of transmitting the fragile blood-borne virus.

Because modes of transmitting HIV do not involve environmental factors, but rather particular behaviors, HIV/AIDS infected individuals will not be discouraged from remaining contributing members of the Department for as long as possible. The Department will institute reasonable procedures to make the HIV-infected employee's continued employment as productive as possible within the scope of available resources.

Because law enforcement officers, crime scene technicians, and other first responders are exposed on a daily basis to the blood and body fluids of others, the specific guidelines outlined above for these employees will be followed in addition to the basic workplace guidelines.

10.05 Confidentiality of AIDS-Related Reports and Records

1. **Confidential Information.** Any medical documentation or information provided by an HIV-infected employee to Department personnel must be considered confidential.

Any test result or statement indicating that an identifiable individual has or has not been tested for HIV infection, antibodies 2-HIV, or any other infection probably caused by AIDS is confidential. This includes any statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody. No such information is considered public information under the Texas Open Records Act.

2. **Release of Confidential Information Prohibited.** Any member who has access to confidential information is charged with maintaining strict confidentiality and privacy. A person who possesses or has knowledge of confidential information may not release or disclose the information on subpoena or allow information to become known except as provided by law in Section 81.103 of the Texas Health and Safety Code, which generally requires a written authorization from the protected individual. This provision does not preclude an employee from reporting information to his chain of command, the Legal Office, or the Health and Safety Section regarding the subject matter of this section.

Release of this information other than by law is a criminal offense and may expose the individual releasing the information to civil liability, as well.

3. **Request for Legal Opinion.** Any member of the Department receiving a request for any information deemed confidential, which is or may be in the possession, custody, or control of the Department or one of its members, must request a legal opinion from the Chief of Legal Services on the status of the information prior to taking any other action on the request.

4. **Authority to Release.** An employee may waive his right to confidentiality under this section by providing a signed authorization which states the person or class of persons to whom the information may be released or disclosed.

08.11.00 GUIDELINES FOR PAYMENT OF EXPENSES ASSOCIATED WITH EXPOSURE TO INFECTIOUS DISEASE

11.01 Workers' Compensation. Workers' compensation will provide benefits for a work-related exposure to infectious disease if the exposure is incident to an injury for which medical treatment is required. This would include payment for diagnostic testing. For an exposure covered under workers' compensation, see section 09.00 and section 12.00 of this chapter concerning the description of benefits and reporting responsibilities.

11.02 Other Exposures. The Department is authorized to pay for the cost of counseling and testing for employees who receive a work-related exposure to an infectious disease. Payment under this section will only apply to the extent that payment is not covered under workers' compensation or the employee's group insurance carrier (HMO or Blue Cross/Blue Shield). For payment under this section, the employee must submit a request by interoffice memorandum, supported by receipt or invoice showing total cost from the health care provider, to the employee's immediate supervisor, who shall immediately forward to the Health and Safety Section. The employee must also submit an LS-12, Notification of Exposure to Infectious Disease (see Annex #9) and comply with the reporting requirements in section 12.00 of this chapter. The LS-12 and accompanying memorandum must be forwarded to the Health and Safety Section on the next working day following the incurring of expenses related to the testing or counseling.

Payment of costs for counseling and testing based on a possible exposure to HIV may only be made if the employee was exposed to HIV in a manner that the United States Public Health Service has determined is capable of transmitting HIV. Any member of the Department who may have been exposed to HIV while performing Department employment duties may not be required to be tested. However, in order to qualify for workers' compensation and other benefits, an employee who claims a possible work-related exposure to HIV infection must also provide documentation that shows that within 10 days after the date of exposure, the employee had a test result that indicated an absence of HIV. This documentation, should the employee choose to be tested, must be forwarded to the Health and Safety Section within 14 days of exposure.

08.12.00 REPORTING WORK-RELATED INJURIES AND INFECTIOUS DISEASE EXPOSURES

The Department is required by the Workers' Compensation Act to keep a record of all work-related injuries and occupational diseases, whether or not they require medical treatment or cause an employee to lose time from work. The Department is also required to turn in to the State Office of Risk Management a record of all occupational diseases and all work-related injuries which require medical treatment or result in more than one day of lost time from work. The Department is also required to investigate work-related injuries and incidents of occupational disease for the State Office of Risk Management and participate in a risk management program. For these reasons, it is important that the reporting requirements set out below be followed. Failure to follow the requirements may result in disciplinary action. Failure to follow departmental policy will not affect benefits under the Workers' Compensation program, as long as the employee abides by the requirements of the act. A flowchart has been developed to assist employees and supervisors with the reporting requirements when a work-related injury or occupational disease occurs. (See Annex #21.)

12.01 Employee's Responsibilities

1. **Injury or Occupational Disease.** An employee who receives a work-related injury or contracts an occupational disease must report the injury or the diagnosis of the disease to the employee's immediate supervisor immediately, or as soon thereafter as possible. An occupational disease should be reported as soon as the employee has reason to believe that a disease may be related to their employment. A report of an injury or disease should be made without regard to whether or not medical treatment is necessary or whether the employee lost time from work. The employee must cooperate fully with any investigation of a work-related injury or incident of occupational disease. If the employee's immediate supervisor is unavailable, the employee should report the injury or disease to the next supervisor in the chain of command.

2. **SORM-16.** The employee shall complete SORM-16, Authorization for Release of Information (Annex #19), when the employee has sought medical attention and/or lost time from work for a work-related injury or illness. This

form must be submitted to the Health and Safety Section within three (3) calendar days from when the employee reported the illness or injury to their supervisor.

3. **SORM-29.** The employee shall complete SORM-29, Employee's Report of Injury (Annex #20), when the employee has sought medical attention and/or lost time from work for a work-related injury or illness. This form must be submitted to the Health and Safety Section within three (3) calendar days from when the employee reported the illness or injury to their supervisor.

4. Utilization of Sick Leave and Annual Leave

a. For purposes of this section, "sick leave" includes sick leave regularly earned and accumulated by the employee, and sick leave granted from the Sick Leave Pool and extended sick leave with pay authorized by the Director.

b. If an employee loses more than one day from work due to their Workers' Compensation claim, the employee must make an election concerning whether the employee wishes to exhaust all of their earned sick leave and subsequently utilize none, part, or all of their annual leave or to begin to receive Workers' Compensation income benefits after the eighth day disability is reached. No matter which election is chosen, Workers' Compensation income benefits will not begin until the eighth day of disability. The employee must make this election on form SORM-80, Employee Election Regarding Utilization of Sick Leave and Annual Leave (Annex #15). This form must be submitted to the Health and Safety Section within four days, including weekends and holidays, of the employee losing more than one day of work as the result of a work-related injury or occupational disease. Once this form is submitted to the State Office of Risk Management (SORM), the employee may not change their choice of election. If an employee elects to use sick leave instead of receiving income benefits under Workers' Compensation, all chosen leave accruals must be exhausted before any income benefits under the Workers' Compensation program will begin.

c. An employee absent from work for a work-related injury or disease may apply for Sick Leave Pool time or emergency leave with pay only after all available sick leave and annual leave are exhausted. If an employee with a pending Workers' Compensation claim is granted Sick Leave Pool time, or extended sick leave with pay, the employee or supervisor must immediately report the approved leave granted to the Health and Safety Section. This notice may be given over the telephone to the Workers' Compensation Coordinator in the Health and Safety Section.

d. An employee may not elect to use holiday, FLSA, or state compensatory leave while absent from work due to a work-related injury unless the employee has reached maximum medical improvement as specified by the Workers' Compensation Act.

e. If an employee is absent from work due to their work-related injury and on a leave without pay (LWOP) status, prior to reaching MMI they do not need to request Temporary Disability Leave.

5. **HR-57.** The employee shall complete Section III of the HR-57, Supervisor's Investigation of Employee's Injury/Illness (Annex #11), for all reported work-related injuries or incidents of occupational disease after their supervisor has completed Sections I and II. This form must be submitted back to the supervisor within 24 hours of receipt.

6. **Medical Bills.** An employee should submit medical bills for an injury covered by a Workers' Compensation claim directly to the SORM, except that the original bill may be submitted to the Health and Safety Section through the immediate supervisor with the initial claim form (TWCC-1S).

7. **Infectious Disease Exposure Report.** An employee must report any work-related exposure to an infectious disease to the employee's immediate supervisor immediately, or as soon thereafter as possible. If the employee's immediate supervisor is unavailable, the employee should report the exposure to the next supervisor in the chain of command. If an employee seeks reimbursement or payment of the cost for testing or counseling related to the exposure, the employee must comply with the provisions of Section 11.00 of this chapter.

8. **SORM-74 Witness Statement.** An employee who witnesses a work-related injury or infectious disease exposure of another employee shall report that fact to the immediate supervisor of the injured employee and submit form SORM-74, Witness Statement (Annex #16), to that supervisor within three days of the injury.

12.02 Supervisor's Responsibilities

1. **Initial Notification.** An employee may make a report to his/her supervisor of a work-related injury or occupational disease either orally or in writing. A supervisor may also receive notice through another employee or through actual knowledge of an incident. Once any supervisory or management level personnel with the Department receives notice, from whatever source, that a Department member has received a work-related injury or has contracted an occupational disease, that supervisor or manager must immediately notify the injured employee's immediate supervisor of the injury or disease. Any supervisor who receives a report of a work-related exposure to infectious disease by an employee shall handle that notice in the same manner as an injury or disease report.

2. **Report and Investigation.** The employee's immediate supervisor is responsible for reporting and investigating the facts surrounding the injury, occupational disease, incident, or exposure to infectious disease. If the employee's immediate supervisor is unavailable, the next supervisor in the chain of command shall be responsible for having an investigation done and having reports completed in a timely manner. The closer in time to an incident that an investigation is initiated, the more accurate and complete the information on the claim will be. This will assist the Department in dealing with questions about claims in an efficient manner.

3. TWCC-1S

a. The immediate supervisor of an employee who has received a work-related injury or exposure to infectious disease or who has contracted an occupational disease shall complete form TWCC-1S, Employer's First Report of Injury or Illness (Annex #10,) and forward to the Health and Safety Section by 5:00 p.m. of the first working day following the injury, exposure, or notice of occupational disease.

b. Any serious injury to a Department employee shall be reported to the Health and Safety Section by telephone as soon as practicable after the injury. The TWCC-1S must still be filed in the normal manner.

4. **HQ-12.** The immediate supervisor of an employee who has received a work-related injury or exposure to infectious disease or who has contracted an occupational disease shall complete the Incident Report form, HQ-12. (See Annex #1). The supervisor shall discuss the results of the investigation with the employee and require them to complete "Employees Description of Incident". The original shall be sent to the Health and Safety Section located in the Human Resources Bureau within four (4) days of the injury, exposure, or notice of occupational disease. Field personnel shall forward a copy through channels to the rank of captain (or field area manager), who shall then forward to the regional safety officer. Headquarters personnel shall forward a copy through channels to the division chief, a minor division chief, or a Director's staff section/service head, as appropriate.

5. **SORM-74.** Immediately after receiving notice of any injury, the supervisor should determine the names, addresses, and telephone numbers of all witnesses to the incident. The supervisor should ensure each witness completes SORM-74, Witness Statement (Annex #16), and the supervisor will forward the completed forms to the Health and Safety Section within three (3) days from when the supervisor was first notified.

6. Notification of a Change in Status

a. **Reporting Requirements.** The immediate supervisor of an employee who has a Workers' Compensation claim pending shall immediately notify by telephone, the Health and Safety Section each time the employee:

- 1) has changed earnings during any pay period;
- 2) resigns or is terminated;
- 3) returns to work;
- 4) misses work (because of the injury or disease) after a previous return to work; or
- 5) is absent for 60 days and every 60 days thereafter until the employee is able to resume work.

b. If the injured employee has elected to exhaust accrued sick or annual leave prior to receiving payments under Workers' Compensation, the supervisor will advise the Health and Safety Section of the status of the employee's leave balance. The supervisor must also immediately notify the Health and Safety Section upon the exhaustion of all accrued sick and/or annual leave by the employee and if that employee is placed on LWOP status and continue to lose time for the work-related injury.

12.03 Emergency Leave Notification. The Human Resources Bureau shall immediately inform the Health and Safety Section of any grant of Sick Leave Pool benefits to an employee who has sustained a work-related injury.

12.04 Health and Safety Section. The Workers' Compensation Coordinator for the Department is located in the Health and Safety Section of the Human Resources Bureau. The Health and Safety Section will be responsible for submitting all forms generated by the supervisors to the Attorney General's Office. The Health and Safety Section will be responsible for completing and forwarding the Wage Statement (TWCC-3), if the employee experiences one full day or more of lost time, or upon a request from the Attorney General's Office.

Supervisors having questions concerning the completing of forms or investigations may contact the Health and Safety Section.

12.05 Forms. Forms are provided in the Annex section at the end of this chapter. Forms may be copied from the Annex for use in reporting. Forms may also be obtained from the Health and Safety Section.

12.06 Addresses, Phone Numbers, and Fax Numbers

Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704-7491

For an OMBUDSMAN call 1-800-252-7031 or contact the local field office of the Commission (see your local phone book to determine if there is one in your area).

State Office of Risk Management
Workers' Compensation Division
PO Box 13777
Austin, Texas 78711
Phone: (512) 475-1440

Fax: (512) 472-0228

Department of Public Safety—Risk Manager
Program Administrator
Health and Safety Section
PO Box 4087, Austin, Texas 78773-0251
5805 North Lamar Blvd., Austin, Texas 78752-4422
Phone: (512) 424-2725
Tex-An: 225-2725
Fax: (512) 424-2739

Department of Public Safety
Workers' Compensation Coordinator
PO Box 4087, Austin, TX 78773-0251
5805 North Lamar Blvd., Austin, TX 78752-4422
Phone: (512) 424-2738
Tex-An: 225-2738
Fax: (512) 424-2739

Department of Public Safety Health and Safety Section
PO Box 4087, Austin, Texas 78773-0251
5805 North Lamar Blvd., Austin, Texas 78752-4422
Phone: (512) 424-2737
Tex-An: 225-2737
Fax: (512) 424-2739

08.13.00 TEXAS DEPARTMENT OF PUBLIC SAFETY RETURN TO WORK (RTW) POLICY

The Department of Public Safety strives to provide a safe and healthful environment in which to work and conduct business. The Return to Work (RTW) Program provides a mechanism for the Department to move employees who have suffered a work-related injury or illness back into the workforce as soon as possible. If the employee is unable to perform his or her full, regular duties, whenever possible the employee is expected to participate in the RTW Program by performing temporary work assignments which are within his or her capabilities. By allowing an employee to perform modified regular duties or alternate duties, the employee remains a productive member of the workforce while recuperating. Temporary positions may not always be available for a person suffering from a work-related illness or injury, but every effort should be made to assign injured or ill employees to temporary assignments when possible.

Specific procedures shall be provided in this section to guide employees regarding the RTW Program. All employees of the Department of Public Safety are expected to support and fully comply with this policy and the procedures provided to implement this policy.

Although the program is designed to apply to work-related injuries or illnesses, temporary assignments may also be given to employees in need of modified or alternative duties as a result of nonwork-related illness or injury at the discretion of their division chief or special section head.

This section does not constitute a promise of continued employment for injured or ill employees. The business necessity of filling positions of employees unable to fulfill job requirements may dictate termination of employment with the Department under the provisions of Chapter 7A, Removal from Payroll.

13.01 Coordination with Other Laws

1. The Texas Workers' Compensation Act, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) can interrelate in an RTW context when an employee who sustains a compensable injury in the course and scope of employment also meets the criteria for protection under the ADA and/or the FMLA. The ADA and/or the FMLA also affords protections in nonemployment-related illnesses and injuries. The RTW Program must be in compliance with protections afforded by the ADA to a qualified individual with a disability. The RTW Program must also be in compliance with the FMLA job protections afforded to an eligible employee who has a serious medical condition. When the qualifying disability or serious medical condition is sustained in the course and scope of employment, the state's Workers' Compensation laws come into play. Where the state's Workers' Compensation laws conflict with the ADA and/or FMLA, the federal requirements and regulations supersede state law. Supervisors and other Department employees responsible for implementing the RTW Program will do so in compliance with all applicable laws.

2. This RTW Program is meant to assist employees with a temporary disability move back into the workforce at a pace that will benefit both the employee and the Department. Participation in the program shall not be construed as recognition by the Department, its management, or its employees that any employee who participates in the program has a disability as defined by the ADA. If an employee needs an accommodation for an injury or illness that results in a disability under the ADA, it is the employee's responsibility to inform his or her supervisor or a person in a responsible management position that a disability under the ADA exists and that a reasonable accommodation is necessary to perform the essential functions of the employee's job.

3. For additional information on departmental policies regarding FMLA, ADA, and Workers' Compensation, refer to Chapter 7, 07.03.00 (FMLA); Chapter 18, 18.30.00 (ADA); and Chapter 8, 08.09.00 (Workers' Compensation) of the General Manual.

13.02 General Administration. Each division chief or special section head will be responsible for coordinating the RTW Program for their division or special section. Each division chief or special section head may designate a member of their staff to act as the RTW Coordinator. Modified and alternate duty assignments (bona fide job offers) will be approved by the division or special section RTW coordinator. The Health and Safety Section in the Human Resources Bureau will oversee the general administration of the RTW Program and provide technical assistance.

13.03 Definitions

1. **Alternate Duty.** Performance of the essential functions of a job or position other than the position for which the employee is employed. Alternate duty allows the employee to temporarily perform other duties and tasks that are within the restrictions to duty imposed by the health care provider. Such alternate duty may be physically located in the same facility or in another facility. Alternate duty is a temporary arrangement and is not permanent in nature.

2. **FMLA Leave.** Federal leave entitlement of up to 12 weeks of paid or unpaid leave according to the Department's leave policies when an eligible employee is unable to work because of a serious health condition. The leave is normally continuous, but may also be taken intermittently or on a reduced leave schedule.

3. **Full Duty.** Performance of all duties and tasks of the position for which the employee is employed. Full duty entails performing all essential and marginal functions of the employee's regular job.

4. **Lost Time.** Time spent away from work at the direction of a health care provider as a result of an injury or illness. The term does not include time worked in a temporary assignment.

5. **Modified Duty.** Performance of some of the functions and tasks of the regular job duties for which the employee is employed. Modified duty allows the employee to return to current employment in his or her regular job, and perform those duties and tasks that are within the capabilities of the employee, given the restrictions to duty imposed by the health care provider. Modified duty is a temporary arrangement and is not permanent in nature.

6. Temporary Assignment. Performance of a temporary job assignment that is intended to return an injured employee to work at less than his or her full duties when an injury or illness prevents the employee from working full duty. Two types of temporary assignments are modified duty and alternate duty. Temporary assignments are not permanent in nature.

13.04 Employee Participation. In order for an employee of the Department to be eligible to participate in the RTW Program, the employee must have a work-related injury or illness:

- that results in lost time away from work;
- that prohibits the employee from performing the functions of his or her job;
- in which the physical restrictions or limitations are documented by the health care provider; and
- that there is a likelihood of returning to work on a full-time and full-duty status at the end of the recuperation period.

If an employee is certified by the health care provider to return to work, but at less than full duty, the Department may provide a temporary assignment position, if available, to the employee. Normally, the expected recuperation period should be less than six months, but more than one month. The immediate supervisor will determine the availability or suitability of temporary assignments on a case-by-case basis, where the recuperation period will be for less than one month.

13.05 Duration of Participation in Program. The maximum length of time that an employee may normally participate in the RTW Program is six months. However, the participation of an injured or ill employee in the RTW Program can be terminated earlier or extended by the appropriate RTW Coordinator, if such action would be in the best interest of the Department. Supervisors must inform the appropriate RTW Coordinator when an employee participating in the RTW Program:

- is declared permanently impaired by the health care provider (has reached maximum medical improvement [MMI]);
- has been involved in the program for six months; or
- has completed the duration of the approved temporary assignment.

Once the RTW Coordinator has been informed of these events, a determination will be made, in consultation with the appropriate division chief or special section head, concerning the continued employment status of the employee with the Department.

Once an employee has been authorized by the treating health care provider to return to full duty with or without a reasonable accommodation, participation in the RTW Program will terminate. The employee shall return to their regular job assignment.

The procedures outlined in Chapter 18 should be followed if a reasonable accommodation is requested under ADA.

13.06 Commissioned Employee. A commissioned peace officer who suffers an injury or illness that effects their ability to engage in the law enforcement function, may be required to report to temporary assignments in civilian attire or be prohibited from driving a marked patrol vehicle. The appropriate RTW Coordinator will decide this issue on an individual basis after considering the restrictions of the illness or injury and the demands of the temporary assignment.

13.07 Temporary Assignment Positions. The injured employee will be matched to a temporary position based on the restricted duties outlined by the treating health care provider, the employee's qualifications, the employee's entitlement to FMLA leave, the availability of temporary assignments, and other appropriate factors. These temporary assignments shall be coordinated by the supervisor with the appropriate RTW Coordinator. An employee may receive

more than one temporary assignment during participation in the RTW Program. Assignments will depend on the availability of suitable tasks. A temporary assignment position is not a permanent placement.

Temporary assignments are not considered demotions and the employee will continue to receive the normal rate of pay as for the employee's permanent assignment, including any regular changes in pay or grade to which the employee would be otherwise entitled.

Any temporary assignment offer shall be documented in a bona fide offer of employment letter to the employee. (For a sample, see Annex #23, Page 2 of 2.)

13.08 Bona Fide Job Offer. When it is determined that an employee has been released to return to a modified or alternative duty status, the supervisor must make a bona fide job offer in accordance to the steps outlined below.

1. The bona fide job offer should be made when an employee has not returned to work, but:
 - a. the health care provider notifies the Department of a release to return to work;
 - b. the State Office of Risk Management notifies the Department of a release to return to work; or,
 - c. the ability of the employee to return to work is identified from other sources.
2. A bona fide offer will consist of a written offer of employment which includes:
 - a. duties of the position;
 - b. physical limitations;
 - c. location of position; and
 - d. deadline for decision to be made.

(For a sample bona fide job offer letter, see Annex #23, page 2 of 2.)

3. If the employee is out on an employment-related illness or injury, the supervisor should immediately contact the WCC in the Health and Safety Section to discuss possible loss of Workers Compensation benefits if the employee refuses the bona fide job offer.

13.09 Refusal of a Bona Fide Job Offer. All eligible employees are expected to participate in the program. An employee who refuses a bona fide job offer may be subject to the following:

1. Workers Compensation benefits may be denied or reduced;
2. the employee may be placed on LWOP status;
3. the employee may be denied extended leave benefits; or
4. the employee may be terminated.

Failure to respond or appear at the specified date and time will be considered a refusal. Any employee who has not exhausted any applicable leave period available under the FMLA will not be terminated during the FMLA leave period, but the other conditions could still apply.

13.10 Evaluative Medical Status Reports. Before an ill or injured employee may return to work in a temporary duty capacity, the supervisor must request and the employee must provide an Evaluative Medical Status Report (Annex #22) from the treating health care provider. Also, each employee who is off duty for medical reasons or who is participating in the RTW Program is responsible for obtaining an Evaluative Medical Status Report at least once each month. These reports shall be provided to the employee's immediate supervisor within two working days of the examination.

The supervisor should complete the appropriate blanks in the Evaluative Medical Status Report and give the form to the employee. The employee should have the form filled out by the health care provider. Instructions for completing the form are in Annex #22.

The Evaluative Medical Status Report should specifically define an employee's medical condition, a prognosis for recovery with an expected time period for recovery, and an identification of any physical performance limitations or restrictions of activity.

The supervisor shall forward a copy of the Evaluative Medical Status Report to the Workers Compensation coordinator in the Health and Safety Section to be placed in the Workers Compensation file.

All medically related documentation must be maintained in a separate confidential file at the employee's work location, not the regular personnel file, for three years. Information contained therein will be disseminated only on a need-to-know basis.

13.11 General Procedures

1. Initial Notification of Lost Time and Coordination with the Health Care Provider

a. An employee who needs to be off duty for medical reasons should contact his supervisor as outlined in the Department's sick leave and FMLA policies in Chapter 7 of the General Manual, as appropriate.

b. The supervisor of the injured or ill employee should call or visit the employee as soon as possible to determine what support or assistance is needed, and ensure the employee is familiar with the Department's leave policies and the provisions of the RTW Program.

c. Each employee is responsible for making every reasonable effort to return to regular, full duty at the earliest possible date.

d. The supervisor of the injured or ill employee should establish communication with the health care provider. The supervisor should explain the departmental RTW Program including our goal for the injured or ill employee to return to a productive capacity as soon as possible. (Sample letter in Annex #23, page 1 of 2.) Communication with the health care provider may need to be made through the employee because of the reluctance of providers to complete forms unless requested by their patients.

e. If the supervisor has any questions regarding an employee's ability to perform certain job tasks or functions without further injury to his/her physical well-being, the supervisor must ask the employee to obtain written clarification regarding the exact restrictions placed on the employee, if any, from the health care provider before reporting to work. An employee is not to be placed in a temporary assignment which could result in additional liability to the Department or a direct threat to the safety of the employee, coworkers, or the public.

f. Before receiving communication from the employee's treating physician, the employee should sign a release of medical information and documentation, form HR-80. (Chapter 7, Annex #12.)

g. In situations where full duty is not immediately practical or possible, the supervisor shall establish and maintain close communication and cooperation with the employee and the employee's treating health care provider. The supervisor and employee will provide the treating health care provider with information about the employee's regular job duties and an Evaluative Medical Status Report form so an informed decision can be made regarding the employee's medical condition and their ability to return to temporary duty status.

h. Supervisors should maintain a confidential log of all communications with the employee and the health care provider noting date, time, and a brief summary of conversations. Medical documentation and copies of all correspondence should be maintained. This documentation must be maintained in a separate confidential file at the employee's work location, not the regular personnel file, for three years.

i. An injured or ill employee is still considered an employee of this Department and must comply with all Department policies and procedures. If an employee refuses to cooperate or communicate with their supervisor as requested, then they are in violation of policy and appropriate disciplinary action will be taken.

2. The Bona Fide Job Offer. If the treating health care provider determines that an injured or ill employee is unable to return to full duty, but would be able to return to a temporary duty assignment during a recuperative period they predict will be between one and six months in duration, then the supervisor will implement the following procedures.

a. The supervisor will review the Evaluative Medical Status Report signed by the health care provider to determine if a temporary duty position is available for the employee. The temporary duty position should be tailored to meet the physical capabilities as determined by the treating health care provider.

b. If a temporary duty position is available which meets the physical limitations of the employee, the supervisor will attach the Evaluative Medical Status Report to the proposed bona fide job offer and forward all documentation to their RTW Coordinator for approval/disapproval.

c. If the supervisor is unable to locate or create a temporary position, the supervisor will contact their RTW Coordinator concerning the availability of other possible temporary assignments. If after this further search no appropriate temporary assignment has been located, the supervisor will notify the employee in writing that a temporary position is currently not available.

d. If approval of the temporary position is received, a bona fide job offer should be made in writing to the employee requesting that the employee return to work, in accordance with the health care provider's description of limitations on a certain date. Emphasize the Department's need for the employee's expertise and that contact will continue up to the scheduled date of return to ensure everything is going well for the employee. (Sample letter in Annex #23, page 2 of 2.)

e. If the bona fide job offer is refused, advise the RTW Coordinator.

f. Once the employee has accepted or refused the bona fide job offer, contact the Health and Safety Section in the Human Resources Bureau immediately. Forward all documentation to be added to the employee's Workers' Compensation file.

13.12 Monitoring the Employee on Temporary Assignment

1. The supervisor should monitor the employee's progress and communicate with the employee to determine if the temporary position is meeting their physical limitations.

2. When the employee returns to work in a full-duty capacity or resigns or is terminated, the supervisor should immediately inform the Health and Safety Section regarding the change in duty status.

3. No later than one month after initiation of temporary duty, and every month thereafter, a meeting will be set at which the employee and the supervisor shall discuss the status of the employee and the temporary duty placement. The meeting should determine if the supervisor should:

- a. continue the employee on temporary duty for up to six months;
- b. return the employee to regular duty, with a full medical release;
- c. place the employee on leave status using accrued leave and/or place the employee on leave without pay status with weekly reviews for determining return to full duty as soon as possible;
- d. have the employee begin the process to request an accommodation for a permanent disability under the ADA; or
- e. begin the process to remove the employee from the payroll under the provisions of Chapter 7A of the General Manual.

The supervisor should ensure that an updated "Evaluative Medical Status Report" is obtained for this meeting.

4. If an employee has participated for six months in the Department's RTW Program, the RTW Coordinator should be informed immediately. Only the RTW Coordinator may approve participation in the RTW Program for longer than six months.

13.13 Monitoring the Off-Duty Employee. If a temporary job is not available, the employee is not released to return to work in any capacity by the treating health care provider, or the employee refuses a bona fide job offer for a temporary duty, then this section applies.

1. The supervisor should monitor the employee's progress and communicate with the employee on a weekly basis.

2. The supervisor should require that the employee complete the "Evaluative Medical Status Report" every 30 days to reassess if a temporary assignment is feasible for the employee. The Evaluative Medical Status Report shall be forwarded to the Department's Health and Safety Section, with a copy forwarded to the employee's Major Division Return to Work Coordinator.

3. The supervisor should arrange to meet with the employee at least once a month to determine the status of the employee, ensure all appropriate paperwork is completed, and answer any questions the employee may have regarding DPS policies and procedures.

4. When the employee returns to work in any capacity or resigns or is terminated, the supervisor should immediately inform the Health and Safety Section, and the employee's Major Division Return to Work Coordinator regarding the change in duty status.

13.14 Duties of the Temporary Assignment Supervisors. If the injured or ill employee receives a temporary assignment in a supervisory section other than the permanent section, the permanent supervisor should contact the temporary supervisor and provide the temporary supervisor with all information necessary for the temporary supervisor to monitor the employee during the temporary assignment. The temporary supervisor will be responsible for all supervisory duties concerning the injured or ill employee during the pendency of the temporary assignment. The temporary supervisor is

responsible for informing the permanent supervisor of all personnel activities involving the employee and should forward a copy of all documents concerning the employee to the permanent supervisor for placement in the employee's file. The temporary supervisor will have full supervisory authority to enforce all policies and procedures of this Department regarding the employee temporarily assigned to them.

The temporary supervisor is responsible for leave records and supervision of the employee during the temporary assignment. The temporary supervisor will be involved in the performance evaluation process should the employee evaluation need to be completed during the temporary assignment. Both supervisors will provide input into the evaluation process; however, the permanent supervisor shall be ultimately responsible for the performance evaluation.

08.14.00 HEALTH AND PHYSICAL FITNESS POLICY

14.01 Objective

The Texas Department of Public Safety Health and Physical Fitness Policy is designed to address the issue of good health and physical fitness for commissioned officers and recognize the benefit to non-commissioned personnel.

The objective of the program is to support and assist officers in the maintenance of good health and fitness by providing a periodic evaluation and assessment of their general physical condition. In addition, the program will also provide valuable resources and incentives for non-commissioned personnel to promote and maintain healthy lifestyles.

The key to good health and fitness lies in lifestyle. There is not a great deal that others can do to improve an officer's level of health and fitness. Each officer has an individual responsibility to maintain a level of fitness that permits him/her to carry out job responsibilities and safely handle any situation that may arise. More importantly, officers have a responsibility to their families when it comes to day-to-day safety and longevity.

The acceptance of this responsibility involves a commitment from each officer. Unfortunately, good health and fitness does not "just happen"; therefore, personal goals must be established and effort must be put forth to achieve them. A fitness plan, which includes goals in the areas of nutrition, exercise, and weight control, will pay great dividends if carried out.

This policy is also designed to assist and support officers in establishing and carrying out a health and fitness plan. The positive results will benefit the Department and Texas' citizens by ensuring a physically fit and well-trained force that is ready to safely respond to any situation. Each officer will benefit from the additional officer-safety factor that is present when one is physically fit. In addition, officers will be better able to perform day-to-day duties with a reduction of stress. Families of officers will benefit from a continued level of health and fitness, which should contribute to a more positive and productive lifestyle, as well as a longer life.

The Regional Commander will identify appropriate personnel under their command to receive training and certification from the Education, Training, and Research Division (ETR) to conduct physical health screening and testing.

For purposes of this policy, PRT is the Physical Readiness Testing.

14.02 Pre-Employment Physical Tests and Examination. Applicants for the position of trooper will be subject to the following physical examinations:

- 1. Physical Readiness Testing.** All applicants will be initially tested in the field. Those applicants that cannot pass the PRT will not be allowed to continue in the process. Applicants should be encouraged to put forth their best efforts and reminded that the application and selection process is competitive. Once accepted to the academy, all new recruits

will be tested at the beginning of the recruit school. Those applicants that cannot pass the PRT will be rejected from attending the academy. All applicants must complete the Physical Readiness Testing.

The minimum standard for each applicant is based on age and gender. Using the percentage results for the test battery found on the chart in Annex #24 and the 2000 Meter row calculator; applicants must meet a minimum of 50% score for each test for their age and gender to be considered for employment.

The PRT test is offered in two formats:

A. Run, Push-ups, and Abdominal Crunches.

1. One and a half (1½) mile run
2. Push-ups, with no time limit
3. Abdominal crunches, maximum number within two minutes.

B. 2000 Meter Row.

2. Physical Examination. All applicants for employment as a commissioned officer will be required to undergo a physical examination. Applicants will be directed to a physician designated by the Department, at no cost to the applicant.

14.03 Physical Condition Testing During Employment for Commissioned Personnel. All full time, active commissioned officers will be subject to physical condition testing as follows:

1. Testing Periods

A. Between September 1st and November 30th, all commissioned employees must pass the PRT. All attempts at the PRT must be completed by November 30th.

B. Between March 1st and May 31st, all commissioned employees must pass the PRT. All attempts at the PRT must be completed by May 31st.

2. Pre-Testing General Health Screening. All commissioned employees are required to have a physical health screening conducted by a physician prior to participation in the PRT testing.

A. A copy of the ETR-162, Preventive General Health Screening Form must be on file, dated within 12 months from the date of the PRT attempt, and approved for participating by the employee's physician.

B. If the employee's physician does not recommend participation in the PRT, the employee will not be allowed to test during the testing period. If an employee is unable to test they are considered to have failed the PRT, unless they have obtained a medical waiver.

C. If the ETR-162, completed by a physician does not authorize participation in the PRT, the employee may be required to have an HR-87 completed to determine if there are physical limitations that prevent the performance of the employee's duties. The chain of command, in connection with HR, will initiate this process and determine the appropriate course of action.

3. **Physical Readiness Testing (PRT).** The PRT standard for each employee is based on their age and gender. Using the percentage results for the test battery found on the chart in Annex #24, the 2000 Meter row calculator, or the combat fitness calculator; all commissioned employees must meet a minimum of 50% score for their age and gender.

The PRT test is offered in three formats:

A. 2000 Meter Row.

B. Run, Push-ups, and Abdominal Crunches.

- 1) One and a half (1½) mile run
- 2) Push-ups, with no time limit.
- 3) Abdominal crunches, maximum number within two minutes.

C. Combat Fitness Evaluation.

- 1) Three rounds of:
 - a) One minute wall ball
 - b) One minute sumo deadlift high pull
 - c) One minute box jump
 - d) One minute push press
 - e) One minute row
 - f) One minute rest

D. The employee may elect to take the PRT testing option that best fits their needs. Employees will be allowed three attempts per testing period to pass the PRT. The employee may select to take any of the test formats offered. One of the three attempts must be the 2000 Meter Row. All attempts must be completed within the testing period.

E. An employee who fails to pass PRT is required to report that failure to the employee's immediate supervisor.

F. An AED and certified AED operator or Department approved equivalent must be present at all physical readiness tests or organized fitness training events.

G. At the end of each testing period, agency wide commissioned officer results will be reviewed by Education, Training and Research. The minimum percentage passing score may be adjusted with approval of the Director to address potentially disparate impact of the presumptive passing score on any class of individuals.

4. **Documentation.** The Department certified fitness tester conducting the physical condition testing will be required to document the results on a form approved by Education, Training, and Research. A copy of this form will be given to each employee's immediate supervisor and the employee. The original will be forwarded to Human Resources

with a copy submitted to the Lieutenant, Fitness and Wellness Unit, ETR. Fall testing result forms must be submitted to HR and ETR by December 15 and spring testing result forms by June 15.

5. **Waivers.** All waivers must be requested on a form approved by ETR and the request approved by the Deputy Director of Law Enforcement or his designee. When the need for the waiver is foreseeable, the employee must submit the request 30 to 45 days prior to the beginning of the testing period so that the process is completed during the testing period.

A. **Medical Waivers.** An employee must report to his/her immediate supervisor any medical condition that could affect the employee's ability to perform all assigned tasks and responsibilities, including participating in PRT. All medical waiver requests must be accompanied by a letter from a physician describing the physical condition that prohibits participation in the PRT. Letters from physicians for temporary or extended waivers must be issued within three months of the testing period. Each physician letter must be accompanied by a memorandum from the employee detailing the physical condition that prevents participation in the PRT

Employees unable to perform some or all of the physical condition testing may apply for one of the following waivers:

1) **Temporary Waiver.** An employee with a temporary physical condition that prohibits them from participating in the PRT may request a temporary waiver. A temporary waiver is granted per testing period.

2) **Extended Waiver.** An employee with a permanent physical condition that prohibits them from participating in the PRT may request an extended waiver. An extended waiver may be granted for a period of time determined by the Deputy Director of Law Enforcement or his designee.

The Deputy Director of Law Enforcement may request additional information from the employee or their attending physician if needed to assist with determining whether to approve a request.

B. Employees who are unable to participate in PRT due to a physical condition may be required to have their physician complete an HR-87 to determine if there are physical limitations that prevent the performance of the employee's duties. The chain of command, in connection with HR, will initiate this process and determine the appropriate course of action.

C. **Military Waivers.** An employee who is absent during an entire testing period due to active military duty may apply for a waiver for the testing period. The employee, or supervisor if the employee is unavailable, should submit the required ETR waiver request form and a memorandum explaining the circumstances to the Deputy Director for Law Enforcement.

D. The approved waiver request form must be submitted to HR. Approved waiver request forms for the fall testing period should be submitted to HR by December 15. Approved waiver forms for the spring testing period should be submitted to HR by June 15.

E. An employee who has been granted a waiver is considered to be compliant with this policy.

14.04 Consequences of Failing to Comply with PRT Requirements

A. A commissioned officer who has not passed the PRT, received a waiver, or otherwise attained compliance with this policy will not be eligible to participate in any of the following until they attain compliance:

1. The promotional process; and

2. Secondary employment requiring the use of the officer's commission or wearing of the department uniform.

B. Mandatory Fitness Education.

1) Commissioned officers unsuccessful in passing the PRT during any testing period are required to successfully complete a health and fitness program established by the ETR. This education component may be conducted through video or web based training at the discretion of ETR.

2) Commissioned officers unsuccessful in passing the PRT in two consecutive testing periods are required to successfully complete a health and fitness program which includes a comprehensive fitness improvement plan (FIP).

a. **Fitness Improvement Plan (FIP).** The FIP will be established by ETR in coordination with the employee's supervisor and a Department certified fitness tester to ensure the appropriate goals, progress assessments, and time frame for improvement are adopted specific for each employee's deficiencies. The employee's immediate supervisor will be provided a copy of the fitness plan.

14.05 Education

Education, Training, and Research (ETR) is responsible for developing and implementing health and fitness education and training to assist commissioned and non-commissioned employees in their efforts to improve their overall health and achieve individual fitness goals.

Commissioned and non-commissioned employees desiring to improve their health and fitness are encouraged to participate in training and education offered by ETR. In addition, non-commissioned employees are encouraged to have preventive health screening by their personal physician prior to participating in the Department's health and fitness programs. Permission to participate in these activities on duty time and/or using state resources must be approved by their immediate supervisor prior to attendance/participation.

14.06 Awards and Incentives

The objective of the award and incentive program is to support and encourage commissioned and non-commissioned employees in the maintenance of good health and fitness. Service Commanders or their designees are responsible for administering the award program for the commissioned employees under their command. The Assistant Director of each division or their designee will determine the implementation of the awards program for non-commissioned employees in their division. Non-commissioned personnel may participate in the awards testing during duty time.

A. Administrative Leave.

1) The Department shall grant administrative leave on a progressive award scale of no more than 16 hours per testing period and of not more than four (4) days or 32 hours per fiscal year for commissioned and non-commissioned employees who exceed the minimum PRT fitness standards. (See Annex #24)

2) Administrative Leave shall be granted per testing period--Employees may only receive the maximum number of award hours eligible for the highest award achieved during that testing period, not to exceed 16 hours per testing period or 32 hours per fiscal year. All leave must be used within 12 months from the day that leave was earned.

B. Fitness Star.

1) Granting of a Fitness Star will be dependent upon the aggregate performance beyond the PRT minimum standards. The employee must attain a cumulative average to equal 90% or more.

For Example: A 32 year old male takes the PRT completing 80 sit-ups for a score of 96%, 68 push-ups for a score of 99%, and runs the one and a half mile in 11:24 for a score of 75%. The three percentage scores are added together and divided by three for an average score ($96+99+75=270$, $270/3=90$.) The employee finishes with an average score of 90%, earning the Fitness Star.

2) Once awarded, the Fitness Star Award may be worn on the uniform as prescribed by the THP Manual. Non-uniformed commissioned officers will be guided by their Assistant Director if and when the Fitness Star may be worn. The Fitness Star Award may be worn only if the officer continues to achieve 90% or more in each testing period.

3) All non-commissioned employees are required to have a physical health screening conducted by a physician prior to participation in the awards testing. A copy of the ETR-162, Preventive General Health Screening Form must be on file, dated within 12 months from the date of the awards testing, and approved for participating by the employee's physician.

C. Recognition Awards.

1) The Department may publicize the names of employees awarded the Fitness Star.

2) Competitive Fitness Activities – The Department may create regional fitness competitions designed to foster “esprit de corps.”