

Council Chambers, City Hall
401 South Alamo
Marshall, TX 75670
903-935-4421



Members
Amy Ware, District 4 - Mayor
Marvin Bonner, District 1
Leo Morris, District 2
Jennifer Truelove, District 3
Reba Godfrey, District 5
Amanda Abraham, District 6
Micah Fenton, District 7

REGULAR CITY COUNCIL MEETING

February 23, 2023

6:00 PM

1. Call to Order and Roll Call

2. Invocation and Pledges

3. Citizen Comments

Texas Government Code, Sec. 551.007 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on the agenda the opportunity to do so before or during the body's consideration of the item. The "Citizens Comments" portion of the meeting meets the requirements of this law and is the public's opportunity to speak on any item on the agenda. Those who wish to speak are requested to fill out a public comment form and will have three (3) minutes to speak unless additional time has been requested.

4. Items to be Withdrawn From Consent Agenda

5. Consent Agenda

The items on the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Councilmember may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.

A. Consider approval of the minutes from the February 9, 2023 Regular meeting.

B. Consider approval of a contract agreement between the City of Marshall and Texas State Technical College.

6. Consideration of Item Withdrawn From the Consent Agenda

7. Ordinance

A. Consider approval of an ordinance amending the 2023 annual budget.

8. Resolution

A. Consider approval of a resolution supporting a proposed affordable housing development located at 200 S.Columbus Street (Blue Buckle Building).

9. City Manager Reports and Requests for City Council Consideration

A. Review of Wonderland of Lights 2022

B. Review and update of Tourism & Economic Development Event Calendar for 2023.

- C. 2022 Year-End Report for Memorial City Hall
- D. Presentation from Insyteful Re: Rebranding of the City of Marshall
- E. 2023 Police Report

10. Adjournment

This meeting will be conducted in accordance with the Americans with Disabilities Act. Requests for sign interpretive services will be available with at least 72-hour notice prior to the meeting. To make arrangements for these services, please call the City Secretary's Office at 903-935-4446.



TO: City Council
DATE: February 23, 2023
ITEM #: 5.A
SUBJECT: Consider approval of the minutes from the February 9, 2023 Regular meeting.

Recommendation for Action:

Staff Contact:

Background:

Discussion:

Budget Cost:

Prepared by: Nikki Smith, City Secretary

Attachments: 1. 2-9-23 minutes

Council Chambers, City Hall
401 South Alamo
Marshall, TX 75671
903-935-4421



Members
Amy Ware, District 4 - Mayor
Marvin Bonner, District 1
Leo Morris, District 2
Jennifer Truelove, District 3
Reba Godfrey, District 5
Amanda Abraham, District 6
Micah Fenton, District 7

MINUTES
REGULAR CITY COUNCIL MEETING
February 9, 2023
6:00 PM

1. Call to Order and Roll Call

Councilmember Fenton made a motion to excuse Councilmember Truelove's absence. Councilmember Godfrey seconded the motion, which passed with a vote of 6:0.

2. Invocation and Pledges

Mayor Ware

3. Citizen Comments

Texas Government Code, Sec. 551.007 requires that a governmental body must allow each member of the public who desires to address the body regarding an item on the agenda the opportunity to do so before or during the body's consideration of the item. The "Citizens Comments" portion of the meeting meets the requirements of this law and is the public's opportunity to speak on any item on the agenda. Those who wish to speak are requested to fill out a public comment form and will have three (3) minutes to speak unless additional time has been requested.

There were no citizen comments.

4. Items to be Withdrawn From Consent Agenda

Item D was withdrawn from the Consent Agenda.

5. Consent Agenda

The items on the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations, a copy of which is filed with the minutes of the meeting. A Councilmember may remove items from the Consent Agenda by making such request prior to a motion and vote on the Consent Agenda.

Councilmember Fenton made a motion to approve the Consent Agenda. Councilmember Bonner seconded the motion, which passed with a vote of 6:0:.

A. Consider approval of the minutes from the January 26, 2023 Regular meeting.

- B. Consider approval of a resolution to remove Kim Smith, Senior Accountant, as an approved bank signatory on tender for payment and add Kristina Hamilton, Assistant Finance Director.
- C. Consider approval of a resolution to update the authorized City of Marshall Representatives at TEXPOOL.

6. Consideration of Item Withdrawn From the Consent Agenda

- D. Consider approval of the City of Marshall Facilities Naming Policy. Councilmember Godfrey stated her reasons for withdrawing Item D from the Consent Agenda.

Councilmembers asked questions and discussed.

Councilmember Morris made a motion to table the City of Marshall Facilities Naming Policy. Councilmember Godfrey seconded the motion, which passed with a vote of 6:0.

7. City Manager Reports and Requests for City Council Consideration

- A. Consider approval to award a contract to provide Caustic Soda for use in the City of Marshall surface water treatment process.

Eric Powell, Public Works Director, stated the City received two bids for Caustic Soda for use in the City's surface water treatment process. Eric Powell asked for approval to award a contract to Brenntag Southwest, Inc. in the amount of \$0.54 per pound to provide Caustic Soda to the City of Marshall Water Treatment Plant for a term of 90 days.

Councilmember Godfrey made a motion to approve awarding a contract to Brenntag Southwest, Inc. in the amount of \$0.54 dry pound, to provide Caustic Soda to the City of Marshall Water Treatment Plant for a term of 90 days. Councilmember Bonner seconded the motion, which passed with a vote of 6:0.

- B. Consider approval to award a bid to provide Coagulant for use in the City of Marshall's surface water treatment process.

Eric Powell stated the City received two bids for Coagulant for use in the City's surface water treatment process. Eric Powell asked for approval to award a contract to Brenntag Southwest, Inc. in the amount of \$0.4026 per pound to provide Coagulant to the City of Marshall Water Treatment Plant for a term of 90 days.

Councilmember Godfrey made a motion to approve awarding a contract to Brenntag Southwest, Inc. in the amount of \$0.4026 per pound, to provide Coagulant to the City of Marshall Water Treatment Plant. Councilmember

Abraham seconded the motion, which passed with a vote of 6:0.

- C. Consider approval to award a contract for the 2023 Street improvement Program - Part 1: Overlay.

Eric Powell asked for approval to award a contract for the 2023 Street Improvement Program – Part 1: Overlay to Rayford's Truck & Tractor, in the amount of \$1,136,480.

Council members asked questions and discussed.

Councilmember Abraham made a motion to approve awarding a contract for the 2023 Street Improvement Program – Part 1: Overly to Rayford's Truck & Tractor in the amount of \$1,136,480. Councilmember Morris seconded the motion, which passed with a vote of 6:0.

8. Executive Session

Councilmember Bonner made a motion to convene into Executive Session.

Councilmember Godfrey seconded the motion, which passed with a vote of 6:0. The time was 6:59 PM.

Councilmember Godfrey made a motion to reconvene from Executive Session.

Councilmember Abraham seconded the motion, which passed with a vote of 6:0. The time was 7:37 PM.

- A. An Executive Session pursuant to Texas Govt. Code Section 551.071 "Consultations with Attorney" to consult with the City Attorney in an executive session to seek his or her advice on legal matters concerning pending or contemplated litigation and upon a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.
- B. An Executive Session pursuant to the Open Meetings Act, Chapter 551 of the Texas Government Code under Section 551.072. Deliberation regarding real property: Convene in executive session to discuss matters related to the purchase, exchange, lease, sale, or value of real property.

9. Action Item Following Executive Session

- A. Consider action as a result of executive session discussion regarding real property.

10. Adjournment

Councilmember Godfrey made a motion for adjournment. Councilmember Abraham seconded the motion, which passed with a vote of 6:0.



TO: City Council
DATE: February 23, 2023
ITEM #: 5.B
SUBJECT: Consider approval of a contract agreement between the City of Marshall and Texas State Technical College.

Recommendation for Action:

Staff Contact:

Background:

Discussion:

Budget Cost:

Prepared by: Nikki Smith, City Secretary

Attachments: 1. CITY.City to TSTC

Real Estate Sales Contract

This Contract to buy and sell real property between **The City of Marshall, Texas** (“Seller”) and **Technical State Technical College** (“Buyer”) is effective on the date of the last of the signatures by Seller and Buyer and by the Title Company as escrow agent as defined below to acknowledge receipt of the Contract and the Earnest Money (“Effective Date”).

A. Purchase and Sale of Property

1. *Purchase and Sale Agreement.* Subject to the terms and provisions of this Real Estate Sales Contract (the “Contract”), Seller agrees to sell and convey to Buyer and Buyer agrees to buy and pay Seller for the property located at 2660 E End Blvd S., Marshall, TX 75672, and more fully described in Exhibit A (“Land”), together with improvements to the Land (“Improvements”), which is known as the “Center for Applied Technology,” all collectively referred to as the “Property.”

A.2. *Purchase Price.* The purchase price is TWO HUNDRED AND NO/100 DOLLARS (\$200.00) (the “Purchase Price”) to be paid as follows:

A.2.a. One Hundred and No/100 Dollars (\$100.00) paid in cash or certified funds as required by the Title Company; and

A.2.b. The balance of the purchase price shall be paid at closing.

A.3. *Additional Consideration.* As Additional consideration for this Contract, the, Buyer will convey other property described by metes and bounds in the Attached Exhibit “B”, known as the “North Campus” to the Marshall Economic Development Corporation pursuant to that contract of even date herewith, and which is incorporated herein by reference as if fully copied and set forth at length (herein referred to as “the MEDCO Contract.”) The parties acknowledge and agree that this contract and the MEDCO contract are contingent upon one another, and should either contract fail to close for any reason, the parties shall be released from the obligations of both contracts. As further additional consideration, the parties shall execute the Lease Agreement (the “Commercial Lease”) to be dated effective as of the Closing Date, pursuant to which the Buyer, as Lessee, will lease from MEDCO, as Lessor, approximately _____ square feet of space located at 2400 East End Blvd., Marshall, Texas 75670, said Commercial Lease to be executed by the parties at Closing in the form of Lease Agreement attached as Exhibit D. Further, as additional consideration Buyer, an institution of higher education, as defined by Texas Education Code §61.003, covenants and promises to use the Land and Improvements to promote the public purpose of economic development through education, pursuant to Texas Local Government Code §272.001(j).

A.4. *Performance.* All deadlines in this Contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. A holiday is a day, other than a Saturday or Sunday, on which state or local governmental agencies and financial institutions are not generally open for business where the Property is located. Time is of the essence.

B. Earnest Money

B.1. Deposit of Earnest Money. Upon execution of this Contract, Buyer will deposit Earnest Money in the amount of One Hundred and No/100 Dollars (\$100.00), along with this fully executed Contract by Seller and Buyer with Central Title Company (the "Title Company"), as escrow agent, located at 200 W Bowie St, Marshall, TX 75670, which sum will be held by the Title Company in a non-interest bearing escrow account at a federally insured bank (the "Earnest Money") and applied according to the terms of this Contract. The Title Company will acknowledge receipt of the Earnest Money by signing Title Company's "Receipt for Earnest Money Deposit" at the end of this Contract and send copies thereof to Seller and Buyer.

B.2. Application of Earnest Money. If the sale of the Property is consummated as contemplated in this Contract, then the Earnest Money will be applied to the Purchase Price at Closing. If this Contract is terminated prior to consummation of the sale of the Property in accordance with this Contract, then the Earnest Money will be applied in accordance with sections D. and G. below.

C. Title and Survey

C.1. Review of Title. The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

C.2. Title Commitment; Title Policy. "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this Contract. "Title Policy" means an Owner Policy of Title Insurance issued by the Title Company in conformity with the last Title Commitment delivered to and approved by Buyer.

C.3. Survey. "Survey" means Seller's existing survey, a true and correct copy of which is attached hereto as Exhibit "C". If Buyer desires to obtain a new survey, the Buyer may do so at Buyer's sole cost and expense, and any new survey shall be the Survey as defined herein.

C.4. Delivery of Title Commitment, Survey, and Legible Copies. Seller must deliver the Title Commitment and legible copies of the instruments referenced in the Title Commitment within thirty (30) days from the Effective Date of this Contract. Buyer will obtain any updated or new survey within thirty (30) days from the Effective Date.

C.5. Title Objections. Buyer has fourteen (14) days after delivery of the last of the Title Commitment, legible copies of the instruments referenced in the Title Commitment, and the Survey ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has ten (10) days

from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before Closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before Closing, Buyer may, within five (5) days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this Contract is terminated or Buyer will proceed to close, subject to Seller's obligations, at or before Closing, to remove all liquidated liens; remove all exceptions that arise by, through, or under Seller after the Effective Date; and cure any other Title Objections that Seller has agreed to cure in the Cure Notice.

D. Inspection Period and Buyer's Right to Terminate

D.1 Inspection Period. Buyer's inspection of the Property may be conducted commencing on the Effective Date of the Contract and ending at 5:00 P.M. local time where the Property is located, forty-five (45) days after the Effective Date (the "Inspection Period").

D.2 Buyer's Right to Terminate. Buyer may terminate this Contract for any reason by notifying Seller of the termination in writing before the end of the Inspection Period. Upon Buyer's delivery of written notice of termination to the Seller, the Title Company is hereby authorized to deliver the Earnest Money to Buyer, less \$100, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this Contract. Upon written request by Seller, Buyer will provide to Seller copies of the following reports related to the Property in Buyer's possession: environmental reports, physical inspection reports, and surveys. If Buyer does not deliver written notice to Seller of Buyer's termination of the Contract before the end of the Inspection Period, Buyer waives the right to terminate this Contract pursuant to this provision.

D.3. Entry onto the Property. Buyer and its duly authorized agents and representatives may enter the Property before Closing, at Buyer's cost and risk, subject to the following:

D.3.a. Buyer must deliver evidence to Seller that Buyer has commercial general liability insurance, with coverages and in amounts as are reasonably satisfactory to Seller.

D.3.b. Buyer may not interfere in any material manner with existing operations or occupants of the Property.

D.3.c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller or Seller's representatives may be present during the tests.

D.3.d. If the Property is physically altered because of Buyer's inspections, Buyer must return the Property to its pre-inspection condition within thirty (30) days after the alteration occurs.

D.3.e. Buyer must abide by any other reasonable entry rules imposed by Seller.

D.4. Environmental Assessment. Prior to the end of the Inspection Period, Buyer has the right to conduct non-invasive environmental assessments of the Property. Seller will provide, or will designate a person with knowledge of the use and condition of the Property to provide, information requested by Buyer or Buyer's agent or representative regarding the use and condition of the Property during the period of Seller's ownership of the Property. Seller will

cooperate with Buyer in obtaining and providing to Buyer or its agent or representative information regarding the use and condition of the Property before Seller's period of ownership to the extent that the information is within Seller's possession or control. Any invasive testing or sampling, including scope of work, must be approved by Seller prior to any such work being performed.

E. Representations; "As Is, Where Is" Provision; Environmental Matters

The parties' representations stated in sections A. and D. of Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date. A party who becomes aware that any of the representations of either party are not true and correct will promptly notify the other party. Unless a party notifies the other party to the contrary on or before the Closing Date, or a party has actual knowledge to the contrary as of the Closing Date, each party is entitled to presume that the representations of the other party in Exhibit B are true and correct as of the Closing Date.

The parties agree to the terms of Section B. ("As Is, Where Is") and Section C. (Environmental Matters) in Exhibit B.

F. Condition of the Property until Closing; Cooperation; No Recording of Contract

F.1. Maintenance. Until Closing, Seller will maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage

F.2. Casualty Damage. Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before Closing. Buyer may terminate this Contract if the casualty damage that occurs before Closing would materially affect Buyer's intended use of the Property, in Buyer's sole and absolute discretion, by giving notice to Seller within fifteen (15) days after receipt of Seller's notice of the casualty (or before Closing if Seller's notice of the casualty is received less than fifteen (15) days before Closing). If Buyer does not terminate this Contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) credit to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid or incurred by Seller to repair the Property. If Seller has not insured the Property and Buyer does not elect to terminate this Contract in accordance with this section, the Purchase Price will be reduced by the cost to repair the casualty damage less any amounts previously paid or incurred by Seller to repair the Property.

F.3. Condemnation. Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this Contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before Closing if Seller's

notice is received less than fifteen days before Closing). The condemnation will be deemed to materially affect Buyer's intended use if the condemnation involves a value exceeding ten percent (10%) of the Purchase Price. If Buyer does not terminate this Contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, (c) if the taking occurs before Closing, the description of the Property will be revised to delete the portion taken, and (d) no change in the Purchase Price will be made.

F.4. Claims; Hearings. Seller will notify Buyer promptly after Seller receives notice of any claim or administrative hearing that is threatened, filed, or initiated before Closing that involves or directly affects the Property.

F.5. Cooperation. Seller will cooperate with Buyer, (a) before and after Closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after Closing, and (b) before Closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

F.6. No Recording. Buyer may not file this Contract or any memorandum or notice of this Contract in the real property records of any county. If, however, Buyer records this Contract or a memorandum or notice, Seller may terminate this Contract and record a notice of termination.

G. Termination

G.1. Disposition of Earnest Money after Termination

G.1.a. To Buyer. If Buyer terminates this Contract in accordance with Buyer's rights to terminate, Buyer will send a request for release of the Earnest Money to Seller, with a copy to the Title Company, to be signed by Seller. If Seller fails to deliver a signed release to the Title Company within fifteen days after delivery of the request for release, Buyer may make a written demand on the Title Company for the Earnest Money, and Title Company will promptly deliver a copy of the demand to Seller. Unless Seller delivers a written objection to the Title Company, within fifteen days after the Title Company delivers Buyer's written demand for the Earnest Money, the Title Company will, without any further authorization from Seller, deliver the Earnest Money to Buyer, less \$100, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this Contract.

G.1.b. To Seller. If Seller terminates this Contract in accordance with Seller's rights to terminate, Seller will send a request for release of the Earnest Money to Buyer, with a copy to the Title Company, to be signed by Buyer. If Buyer fails to deliver a signed release to the Title Company within fifteen days after delivery of the request for release, Seller may make a written demand on the Title Company for the Earnest Money, and the Title Company will promptly deliver a copy of the demand to Buyer. Unless Buyer delivers a written objection to the Title

Company, within fifteen days after the Title Company delivers Seller's written demand for the Earnest Money, the Title Company will, without any further authorization from Buyer, deliver the Earnest Money to Seller.

G.2. Duties after Termination. If this Contract is terminated after the expiration of the Inspection Period, Buyer will promptly return to Seller or destroy as directed by Seller all of Seller's records in Buyer's possession or control. After return of the records, neither party will have further duties or obligations to the other under this Contract, except for those obligations that cannot be or were not performed before termination of this Contract or that expressly survive termination of this Contract.

H. Closing

H.1. Closing. This transaction will close ("Closing") at the Title Company's offices on or before ninety (90) days after the Effective Date.

H.2. Conditions of Closing. Neither party will be obligated to close the sale and purchase of the Property unless the other party has satisfied the following conditions, any of which may be waived by the first party in its discretion:

H.2.a. Representations and Warranties. The representations and warranties of the other party must be true and correct at Closing.

H.2.b. Performance of Covenants and Agreements. The other party must have performed all covenants and agreements required to be performed at or before Closing by that party.

H.2.c. No Bankruptcy. No voluntary or involuntary proceeding in bankruptcy shall be pending with respect to that party.

H.3. Closing Documents; Title Company Documents. The parties will execute and deliver the following closing documents and any documents required by the Title Company.

H.3.a. At Closing, Seller will deliver the following items:

Special Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Commercial Lease between Buyer, as Lessor, and Seller, as Lessee

All Documents required to close the MEDCO Contract

H.3.b. At Closing, Buyer will deliver the following items:

Balance of Purchase Price

Evidence of Buyer's authority to close this transaction

Commercial Lease between Buyer, as Lessor, and Seller, as Lessee

All documents necessary to close the MEDCO Contract

The documents listed in these paragraphs H.3.a. and H.3.b. are collectively known as the "Closing Documents."

H.3.c. Payment of Purchase Price. Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this Contract to the Title Company in funds acceptable to the Title Company. The Earnest Money will be applied to the Purchase Price.

H.3.d. Disbursement of Funds; Recording; Copies. The Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this Contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

H.3.e. Delivery of Originals. Seller will deliver to Buyer the originals of Seller's Records.

H.3.f. Possession. Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at Closing and any liens and security interests created at Closing to secure financing for the Purchase Price.

H.4. Transaction Costs

H.4.a. Seller's Costs. Seller will pay the basic charge for the Title Policy; one-half of the escrow fee; the costs to prepare the deed; the costs to obtain, deliver, and record releases of any liens required to be released in connection with the sale; the costs to record documents to cure Title Objections agreed or required to be cured by Seller and to resolve matters shown in Schedule C of the Title Commitment, and certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in paragraph C.4. and Seller's records; any other costs expressly required to be paid by Seller in this Contract; and Seller's attorney's fees and expenses.

H.4.b. Buyer's Costs. Buyer will pay one-half of the escrow fee; the costs to obtain, deliver, and record all documents other than those to be obtained or recorded at Seller's expense; the cost to obtain any new Survey, the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer, as well as the cost of any other endorsements or modifications of the standard form of Title Policy requested by Buyer; any other costs expressly required to be paid by Buyer in this Contract; and Buyer's attorney's fees and expenses.

H.4.c. Ad Valorem Taxes. Ad valorem taxes on the Property for all years before the calendar year of Closing must be paid by Seller at or before Closing. Ad valorem taxes for the Property for the calendar year of Closing will be prorated between Buyer and Seller as of the Closing Date. If the ad valorem taxes for the current year are assessed, the Title Company will pay the current year's ad valorem taxes at Closing. If the ad valorem taxes for the current year are not assessed, Seller's portion of the prorated taxes will be paid to Buyer at Closing as a credit to the Purchase Price. Buyer will assume the obligation to pay, and will pay in full, such taxes for the year of Closing before delinquency. If the assessment for the calendar year of Closing is not known at the Closing Date, the proration will be based on tax rates for the previous tax year applied to the most current assessed value, and Buyer and Seller will adjust the prorations in cash within thirty days after the actual assessment and taxes are known. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after Closing.

H.4.d. Post-closing Adjustments. If errors in the prorations made at Closing are identified within ninety days after Closing, Seller and Buyer will make post-closing adjustments to correct the errors within fifteen days after receipt of notice of the errors.

H.4.e. Brokers' Commissions. Buyer and Seller represent that there are no other real estate agents or brokers involved in this transaction and each indemnify and agree to defend and hold the other party harmless from any loss, attorney's fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the indemnitor for a broker's or finder's fee or commission because of this transaction or this Contract, whether the claimant is disclosed to the indemnitee or not.

I. Default and Remedies

I.1. Seller's Default; Remedies before Closing. If Seller fails to perform its obligations under this Contract or if Seller's representations are not true and correct as of the Closing Date ("Seller's Default"), Buyer may elect one of the following as its sole and exclusive remedy before Closing: Buyer may terminate this Contract by giving notice to Seller on or before the Closing Date and have the Earnest Money, less \$100 as described above, returned to Buyer. If Buyer Terminates this contract, such termination shall also act as a termination and release of all obligations of either party under the MEDCO Contract.

I.2. Seller's Default; Remedies after Closing. If Seller's representations are not true and correct at Closing due to circumstances reasonably within Seller's control and Buyer does not become aware of the untruth or incorrectness of such representations until after Closing, Buyer will have all the rights and remedies available at law or in equity. If Seller fails to perform any of its obligations under this Contract that survive Closing, Buyer will have all rights and remedies

available at law or in equity unless otherwise provided by the Closing Documents.

I.3. Buyer's Default; Remedies before Closing. If Buyer fails to perform any of its obligations under this Contract ("Buyer's Default"), Seller may terminate this Contract by giving notice to Buyer on or before Closing and have the Earnest Money paid to Seller. If Seller Terminates this contract, such termination shall also act as a termination and release of all obligations of either party under the MEDCO Contract.

I.4. Buyer's Default; Remedies after Closing. If Buyer fails to perform any of its obligations under this Contract that survive Closing, Seller will have all rights and remedies available at law or in equity unless otherwise provided by the Closing Documents.

I.5. Liquidated Damages. The parties agree that just compensation for the harm that would be caused by a default by Buyer cannot be accurately estimated or would be very difficult to accurately estimate and the Earnest Money is a reasonable forecast of just compensation to the Seller for the harm that would be caused by a default.

I.6. Attorney's Fees. If either party retains an attorney to enforce this Contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

J. Miscellaneous Provisions

J.1. Commercial Lease. At Closing, Buyer, as Lessor, and Seller, as Lessee, shall execute and deliver to each party a Lease Agreement in the form attached as Exhibit "D."

J.2. Notices. Any notice required by or permitted under this Contract must be in writing. Any notice required by this Contract will be deemed to be given when received, provided that (a) any notice received on a Saturday, Sunday, or holiday will be deemed to have been received on the next day that is not a Saturday, Sunday, or holiday and (b) any notice received after 5:00 P.M. local time at the place of delivery on a day that is not a Saturday, Sunday, or holiday will be deemed to have been received on the next day that is not a Saturday, Sunday, or holiday. Any address for notice may be changed by not less than ten days' prior written notice given as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

To Buyer: _____
Marshall, Texas 75670

W/ Copy To:

To Seller: 401 S Alamo
Suite 205
Marshall, TX 75670

W/ Copy To: Scott Rectenwald
110 W. Fannin St.
Marshall, Texas 75670

J.3. Entire Agreement. This Contract, its exhibits, and any Closing Documents are the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no representations, warranties, agreements, or promises pertaining to the Property or the sale of the Property by Seller to Buyer, and Buyer is not relying on any statements or representations of Seller or any agent of Seller, that are not in this Contract, its exhibits, and any Closing Documents.

J.4. Amendment. This Contract may be amended only by an instrument in writing signed by the parties.

J.5. Prohibition of Assignment. Buyer may not assign this Contract or Buyer's rights under it without Seller's prior written consent, which Seller has no obligation to grant and which, if granted, may be conditioned in any manner Seller deems appropriate, and any attempted assignment without Seller's consent is void. The consent by Seller to any assignment by Buyer will not release Buyer of its obligations under this Contract, and Buyer and the assignee will be jointly and severally liable for the performance of those obligations after any such assignment.

J.6. Survival. The provisions of this Contract that expressly survive termination or Closing and other obligations of this Contract that cannot be performed before termination of this Contract or before Closing survive termination of this Contract or Closing, and the legal doctrine of merger does not apply to these matters. If there is any conflict between the Closing Documents and this Contract, the Closing Documents control. The representations made by the parties as of Closing survive Closing.

J.7. Choice of Law; Venue. THIS CONTRACT IS TO BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CHOICE-OF-LAW RULES OF ANY JURISDICTION. VENUE IS MANDATORY IN A COURT OF COMPETENT JURISDICTION IN HARRISON COUNTY, TEXAS.

J.8. Waiver of Default. Default is not waived if the nondefaulting party fails to declare a default immediately or delays taking any action with respect to the default.

J.9. Contract Contingent. This contract is wholly contingent upon the contemporaneous closing of the MEDCO contract. Should either contract fail to close for any reason, the parties shall be released from the obligation to close the other contract.

J.10. Severability. If a provision in this Contract is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Contract, and this Contract is to be construed as if the unenforceable provision is not a part of the Contract.

J.11. Ambiguities Not to Be Construed against Party Who Drafted Contract. The rule of construction that ambiguities in a document are construed against the party who drafted it does not apply in interpreting this Contract.

J.12. No Special Relationship. The parties' relationship is an ordinary commercial relationship, and the parties do not intend to create the relationship of principal and agent, partners, joint venturers, or any other special relationship.

J.13. Counterparts. If this Contract is executed in multiple counterparts, all counterparts taken together constitute this Contract. Copies of signatures to this Contract are effective as original signatures.

J.14. Confidentiality. This Contract, this transaction, and all information learned in the course of

this transaction will be kept confidential, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to inspect the Property or Seller or Buyer to close this transaction. Remedies for violations of this provision are limited to injunctions, and no damages or rescission may be sought or recovered as a result of any such violations.

J.15. Binding Effect. This Contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

J.16. Waiver of Consumer Rights. BUYER WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES–CONSUMER PROTECTION ACT, SECTION 17.41 *ET SEQ.* OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.

J.17. Waiver of Jury Trial. **Buyer and Seller, each after consultation with an attorney of its own selection (which counsel was not directly or indirectly identified, suggested, or selected by the other party), both voluntarily waive a trial by jury of any issue arising in an action or proceeding between the parties or their successors, under or connected with this contract or its provisions. Buyer and Seller acknowledge to each other that Buyer and Seller are not in significantly disparate bargaining positions.**

K. Exhibits

The following are attached to and are a part of this Contract:

Exhibit A Legal Description of Land
Exhibit B Representations; Environmental Matters
Exhibit C Existing Survey
Exhibit D Commercial Lease

SELLER:

THE CITY OF MARSHALL, TEXAS

By: _____
Terrell Smith, City Manager

Date: _____

BUYER:

TEXAS STATE TECHNICAL COLLEGE

By: _____
_____, President

Date: _____

Title Company's Acceptance of Contract

Title Company, by its execution and delivery of this Real Estate Sales Contract, acknowledges it is "the person responsible for closing" the transaction that is the subject of this Contract pursuant to section 6045(e) of the Internal Revenue Code and to prepare and file all informational returns, including, without limitation, IRS Form 1099S, and to otherwise comply with the provisions of section 6045(e) of the Internal Revenue Code, and acknowledges receipt of a fully executed counterpart of this Real Estate Sales Contract on this ____ day of _____, 2023.

CENTRAL TITLE COMPANY

By
Name:
Title:

Receipt for Earnest Money Deposit

Title Company acknowledges receipt of the Earnest Money deposit of \$100.00 required under this Real Estate Sales Contract on this ____ day of _____, 2023.

CENTRAL TITLE COMPANY

By
Name:
Title:

Exhibit A
Legal Description of Land

All that certain lot, tract, or parcel of land situated in Harrison County, Texas, within the corporate Limits of the city of Marshall, being 2.670 acres of land, a part of the ASA LANGFORD SURVEY, A-4000, and being a part of that certain 44.317 acre tract of land described in deed from Lonnie C. Sibley, Jr., et ux, to Marshall Economic Development Corp. dated February 19, 1992, and recorded in Volume 1298, page 277 of the Harrison County Deed Records, and also being a part of that certain 2.612 acre tract described in deed from Cinemark USA, Inc., to the Marshall Economic Development Corp., dated February 26, 1992, and recorded in Volume 1298, page 654 of said Deed records, said 2.670 acres being more particularly described as follows:

BEGINNING at a ½" iron rod found for corner at a middle Southwest of said 44.317 acre tract, same being the Northwest corner of that certain 1.377 acre tract described in deed to Johnson Bros. Floor Covering, Inc., recorded in Volume 786, Page 231 of said Deed Records, said rod also being on the East right of way line of U. S. Highway 59;

THENCE North 7 deg. 51'00" East, with said East right of way line, and the West line of said 44.317 acre tract, at 225.00 feet pass a ½" iron pipe found at a middle Northwest corner of said 44.317 acre tract, and the Southwest corner of said 2.612 acre tract, and continuing in all, 278.36 feet to a corner on same, and being the Southwest corner of a 1.542 acre access easement;

THENCE along the south line of said access easement, (1) South 85 deg. 35'30" East – 246.04 feet, and (2) North 56 deg. 51'06" East – 287.34 feet to a corner on same;

THENCE South 33 deg. 08'54" East – 33.60 feet to a corner on the centerline of a creek;

THENCE in a Southerly direction along the centerline of said creek as follows:

- (1) South 18 deg. 02'33" West – 43.72 feet;
- (2) South 32 deg. 33'58" West – 63.63 feet;
- (3) South 21 deg. 11'53" West – 40.07 feet;
- (4) South 50 deg. 03'31" East – 9.00 feet;
- (5) South 33 deg. 54'34" West – 15.10 feet;
- (6) South 54 deg. 20'05" West – 13.99 feet;
- (7) South 56 deg. 21'59" West – 12.37 feet;
- (8) South 15 deg. 45'55" West – 17.73 feet;
- (9) South 52 deg. 29'45" West – 25.44 feet;
- (10) South 84 deg. 53'23" West – 19.61 feet;
- (11) South 51 deg. 40'50" West – 35.58 feet;
- (12) South 19 deg. 12'12" West – 17.14 feet;

- (13) South 5 deg. 17'07" East – 29.04 feet;
- (14) South 24 deg. 31'47" West – 12.15 feet;
- (15) South 64 deg. 55'00" West – 51.32 feet;
- (16) South 17 deg. 22'39" East – 18.16 feet;
- (17) South 77 deg. 50'14" West – 30.72 feet;
- (18) South 21 deg. 54'32" West – 21.64 feet;
- (19) South 57 deg. 51'35" West – 19.67 feet;
- (20) South 21 deg. 32'19" West – 25.99 feet;
- (21) South 30 deg. 51'00" West – 47.39 feet to a corner on a middle south line of said 44.317 acre tract, same being the North line of said 1.377 acre tract;

THENCE North 82 deg. 05'54" West, with the North line of said 1.377 acre tract, 248.26 feet to the place of beginning and containing 2.670 acres of land.

TOGETHER WITH the following described access easement across a part of said 44.317 acre tract of and said 2.612 acre tract, and being particularly described as follows:

BEGINNING at a corner on the East right of way line of U. S. Highway 59, being the Northwest corner of the above described 2.670 acre tract, said corner bears North 7 deg. 51'00" East – 278.36 feet from a ½" iron rod at a middle Southwest corner of said 44.317 acre tract, and the Northwest corner of that certain 1.377 acre tract described in deed to Johnson Bros. Floor Covering, Inc., recorded in Volume 786, page 231 of said Deed Records;

THENCE North 7 deg. 51'00" East, with said East right of way line, and the West line of said 2.612 acre tract, 69.90 feet to a corner on same;

THENCE South 85 deg. 35'30" East – 196.43 feet to a corner;

THENCE North 71 deg. 05'22" East – 186.82 feet to a corner;

THENCE North 56 deg. 51'06" East – 99.73 feet to a corner;

THENCE South 33 deg. 08'54" East – 37.05 feet to a corner, being the Northeast corner of the above described 2.670 acre tract;

THENCE South 56 deg. 51'06" West – 287.34 feet to a corner;

THENCE North 85 deg. 35'30" West – 246.04 feet to the place of

beginning and containing 0.695 acres of land.

Exhibit B

Representations; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date, unless Seller has given Buyer notice of any changes prior to the Closing Date that such circumstances have changed due to causes not reasonably within Seller's control.

***A.1. Authority.* Seller is a Home Rule Municipality, validly existing, and in good standing under the laws of the state of Texas with authority to perform its obligations under this Contract. This Contract is binding on Seller. This Contract is, and all documents required by this Contract to be executed and delivered to Buyer at Closing will be, duly authorized, executed, and delivered by Seller.**

A.2. Seller's Records. The records provided by Seller to Buyer for Buyer's inspections will be true, correct, and complete copies of the records in Seller's possession or control. The records that were prepared by or under Seller's supervision and control will be true, correct, and complete in all material respects. Unless Seller notifies Buyer to the contrary at the time of delivery of records provided by Seller to Buyer that were not prepared by or under Seller's supervision and control, Seller has no actual knowledge that such records are not true, correct, and complete in any material respect.

A.3. No Other Representation. Seller makes no representation with respect to the Property.

A.4. No Warranty. Except as set forth in this Contract and in the Closing Documents, Seller has made no warranty in connection with this transaction.

B. "As Is, Where Is"

THIS CONTRACT IS AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THOSE IN THIS CONTRACT AND THE CLOSING DOCUMENTS.

BUYER IS NOT RELYING ON ANY REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES OTHER THAN THOSE EXPRESSLY CONTAINED IN THIS CONTRACT AND THE CLOSING DOCUMENTS. BUYER

IS NOT RELYING ON ANY INFORMATION REGARDING THE PROPERTY PROVIDED BY ANY PERSON, OTHER THAN BUYER'S OWN INSPECTION AND THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS CONTRACT AND THE CLOSING DOCUMENTS.

The provisions of this section B regarding the Property will survive Closing and may be included in the deed with appropriate modification of terms as the context requires.

C. Environmental Matters

AFTER CLOSING, BUYER RELEASES SELLER FROM LIABILITY FOR ENVIRONMENTAL PROBLEMS OR CONDITIONS AFFECTING THE PROPERTY AND WHICH ARE DISCLOSED OR IDENTIFIED IN ANY OF SELLER'S RECORDS DELIVERED BY SELLER TO BUYER, INCLUDING ANY ENVIRONMENTAL SITE ASSESSMENT OR OTHER REPORT OBTAINED BY BUYER PRIOR TO CLOSING, A COMPLETE COPY OF WHICH SHALL BE PROVIDED TO SELLER ON OR BEFORE THE CLOSING DATE.

The provisions of this section C regarding the Property will survive Closing and may be included in the deed with appropriate modification of terms as the context requires,

D. Buyer's Representations to Seller

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date, unless Buyer has given Seller notice of any changes prior to the Closing Date that such circumstances have changed due to causes not reasonably within Buyer's control.

D.1. Authority. Buyer is a non-profit corporation duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to perform its obligations under this Contract. This Contract is binding on Buyer. This Contract is, and all documents required by this Contract to be executed and delivered to Seller at Closing will be, duly authorized, executed, and delivered by Buyer.

Exhibit C
Existing Survey

Exhibit
D
Commercial Lease



TO: City Council
DATE: February 23, 2023
ITEM #: 7.A
SUBJECT: Consider approval of an ordinance amending the 2023 annual budget.

Recommendation for Action: Consideration of approval of an ordinance amending the 2023 annual budget.

Staff Contact:

Background:

Discussion:

Budget Cost:

Prepared by: Nikki Smith, City Secretary

Attachments: 1. AMENDING 2023 BUDGET Revised2.1

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO. 0-22-22 TO AMEND THE
2023 ANNUAL BUDGET OF THE CITY OF MARSHALL, TEXAS**

WHEREAS, on September 8, 2022 the City of Marshall, Texas passed Ordinance No. O-22-20 adopting the 2023 annual budget; and

WHEREAS, the City of Marshall, Texas desires to amend the 2023 annual budget to provide funding for projects initiated in FY 22 but not fully completed, and utilize available fund balance in FY 2020 Financed Projects Fund, Street Maintenance Fund, and Hotel Occupancy Tax Fund.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARSHALL THAT:

The appropriations for the fiscal year beginning January 1, 2023 and ending December 31, 2023 be amended as follows:

General Fund – \$272,613	
Finance Software Conversion - Finance	\$ 67,000
Body & Vehicle Cameras - Police Department	54,525
Parks Master Plan - Airport Park & City Park	49,500
2022 Street Program - Public Works	42,739
Zoning Ordinance Revision - Community Dev.	26,909
Stage/Skirt - Convention Center	25,880
Vehicle Repairs/Paint - Water Billing	6,060
Utility Fund – \$50,608	
New WWTP Lab/Office Building Design	\$ 30,180
Zoning Ordinance Revision - Utilities	13,478
Engineering Design for Influent Pump Guiderail Replacement	3,950
Finance Software Conversion - Finance	3,000
FY 2020 Financed Projects Fund – \$327,698	
Fund Balance - Street Scape, 400 Block N. Washington/Courthouse Square	\$ 73,000
Remaining Fund Balance:	254,698
Fleet Management Fund – \$56,000	
Vehicle - Support Services	\$ 56,000
Street Maintenance Fund – \$1,322,548	
2022 Street Program - Public Works	\$ 322,548
Fund Balance: A. \$750,000 B. \$250,000	1,000,000
A. Reconstruction Part 2	
B. Reconstruction & overlay of 2021/2022 roads with 2” watermain replacement	
CFRG Grant – \$117,703	
Water Main Replacement - Wood St./Bean St./Medill	\$ 32,133
Engineering Services for Primary Clarifier #2 - WWTP	30,170
Mechanical Bar Screen Install	25,000
Engineering Design for East Ave. Watermain Replacement	19,000
Lift Station Upgrade - East End/West End	11,400
HOT Fund – \$200,000	
Fund Balance - Promotions & Marketing	\$ 200,000

Vote:

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2022.

MAYOR OF THE CITY COUNCIL
OF THE CITY OF MARSHALL, TEXAS

ATTEST:

CITY SECRETARY



TO: City Council
DATE: February 23, 2023
ITEM #: 8.A
SUBJECT: Consider approval of a resolution supporting a proposed affordable housing development located at 200 S.Columbus Street (Blue Buckle Building).

Recommendation for Action: It is the recommendation of the City of Marshall's Community Development Department that the City Council grant approval to support the conversion of the Blue Buckle building located at 200 S. Columbus to loft-style apartments.

Staff Contact:

Background: AVenturine One, LLC has advised that they intend to submit an application to the Texas Department of Housing and Community Affairs for 2023 Competitive 9% Housing Tax Credits for location at 200 S.Columbus Street - location identified as Blue Buckle.

Discussion: Support of the City for promoting quality and affordable housing.

Budget Cost:

Prepared by: Garnett Johnson, Community Development Director

Attachments: 1. Local Government Support - AVenturine One, LLC2

Resolution No. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARSHALL, TEXAS INDICATING SUPPORT FOR THE APPLICATION OF AVENTURINE ONE, LLC AND ITS AFFILIATES, AN AFFORDABLE RENTAL HOUSING DEVELOPMENT KNOWN AS BLUE BUCKLE LOFTS, TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR THE 2023 COMPETITIVE NINE-PERCENT HOUSING TAX CREDITS; APPROVING A WAIVER OF DEVELOPMENT /PERMIT FEES IN THE AMOUNT OF \$250.00; AUTHORIZING THE MAYOR AND/OR DESIGNATED CITY STAFF TO TAKE ALL NECESSARY OR APPROPRIATE ACTIONS ASSOCIATED THEREWITH; MAKING OTHER FINDINGS AND PROVISIONS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to promote the general public welfare; and

WHEREAS, it is the intent of the City Council to promote and encourage affordable housing; and

WHEREAS, Aventurine One, LLC and its affiliates has proposed a development for affordable rental housing at 200 South Columbus Street and 304 & 306 Fannin Street, named Blue Buckle Lofts in the City of Marshall, Harrison County, Texas; and

WHEREAS, Aventurine One, LLC and its affiliates has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2023 Competitive 9% Housing Tax Credits for the Blue Buckle Lofts development; and

WHEREAS, Aventurine One, LLC and its affiliates have requested a waiver of development/permit fees in the amount of \$250.00 for the Blue Buckle Lofts development as a commitment of development funding from the City of Marshall, Texas;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARSHALL, TEXAS:

Section 1. The findings set out in the preamble to this resolution are hereby in all things approved.

Section 2. The City Council of the City of Marshall, Texas hereby confirms that it supports the proposed development of the Blue Buckle Apartments proposed to be located at 200 South Columbus Street and 304 & 306 Fannin Street.

Section 3. That the City Council of the City of Marshall, Texas, hereby approves a commitment to waive Development/Permit Fees in the amount of \$250.00 to be provided to the development in the form of a waiver of development/permit fees.

Section 4. That for and on behalf of the City Council, Amy Ware, Mayor and/or designated City Staff is hereby authorized, empowered and directed to certify these resolutions to the Texas Department of Housing Community Affairs and to take all other necessary or appropriate steps or actions associated with this development funding.

Section 5. That this resolution shall be effective from and after its date of passage.

PASSED AND APPROVED this 23rd day of February, 2023

Amy Ware, Mayor

ATTEST

APPROVED AS TO FORM



TO: City Council
DATE: February 23, 2023
ITEM #: 9.A
SUBJECT: Review of Wonderland of Lights 2022

Recommendation for Action:

Staff Contact:

Background:

Discussion: Review of Wonderland of Lights 2022

As we prepare for Wonderland of Lights 2023, we want to give a review of 2022. We have gathered information about:

- Attendance using Placer.AI
- Events
- Volunteers
- Revenue/Sponsorships
- Total Expenditures for Wonderland of Lights
- New Activities and Items for 2022
- Requests and Improvements

Budget Cost:

Prepared by: Lacy Burson, Main Street Coordinator

Attachments: None



TO: City Council
DATE: February 23, 2023
ITEM #: 9.B
SUBJECT: Review and update of Tourism & Economic
Development Event Calendar for 2023.

Recommendation for Action: Vote for Approval

Staff Contact:

Background:

Discussion:

Budget Cost:

Prepared by: LeAnne White, Economic Development Manager

Attachments: None



TO: City Council
DATE: February 23, 2023
ITEM #: 9.C
SUBJECT: 2022 Year-End Report for Memorial City Hall

Recommendation for Action:

Staff Contact:

Background: Update on the 2022 year at Memorial City Hall Performance Center

Discussion: Highlight the Programming, Survey Results, Challenges, Financial report and Goals for 2023.

Budget Cost:

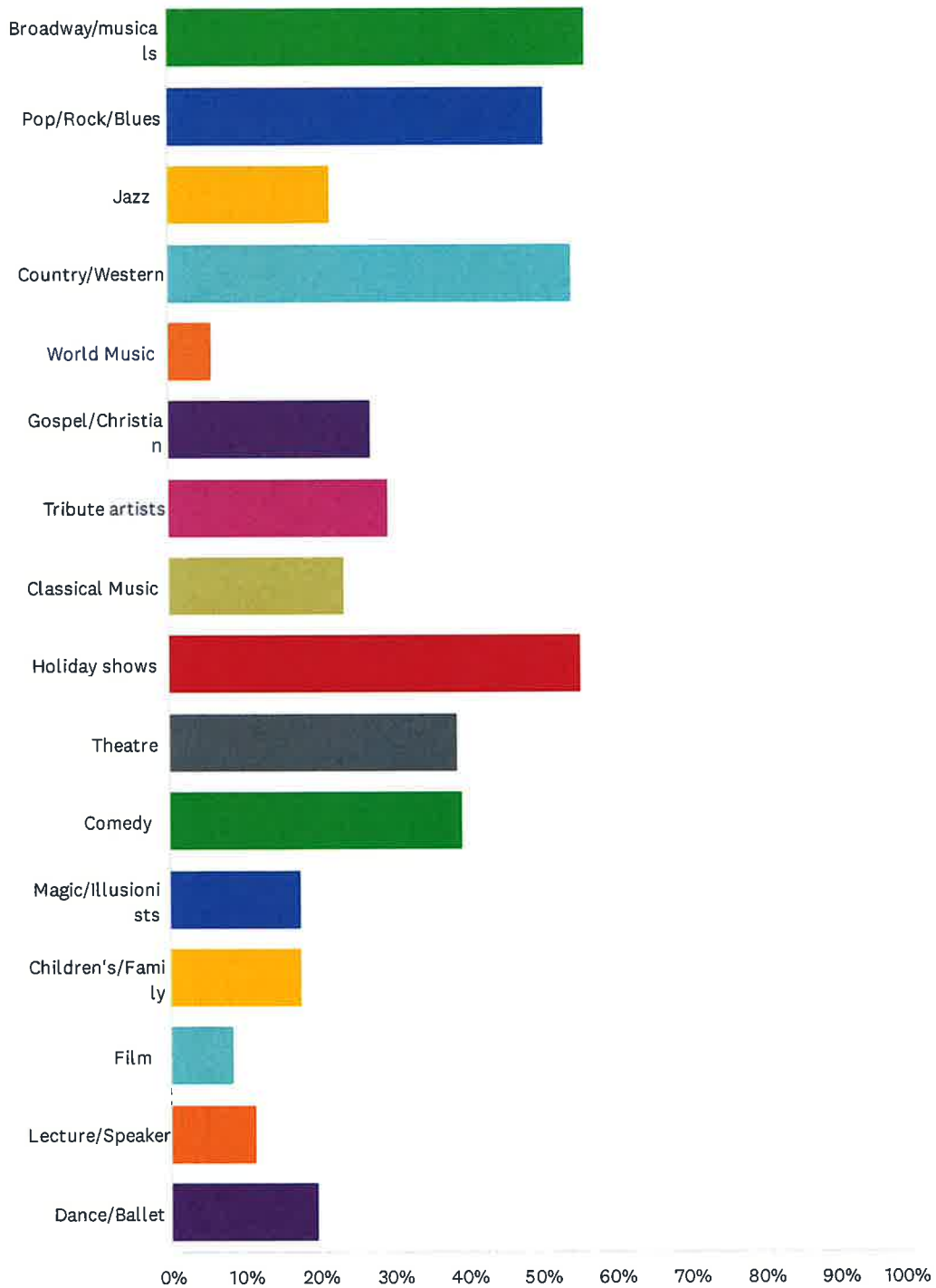
Prepared by: Nikki Smith, City Secretary

Attachments:

1. MCH programming survey results
2. Memo- MCH income for 2022

Q1 What type of performances are you most likely to attend?

Answered: 304 Skipped: 0

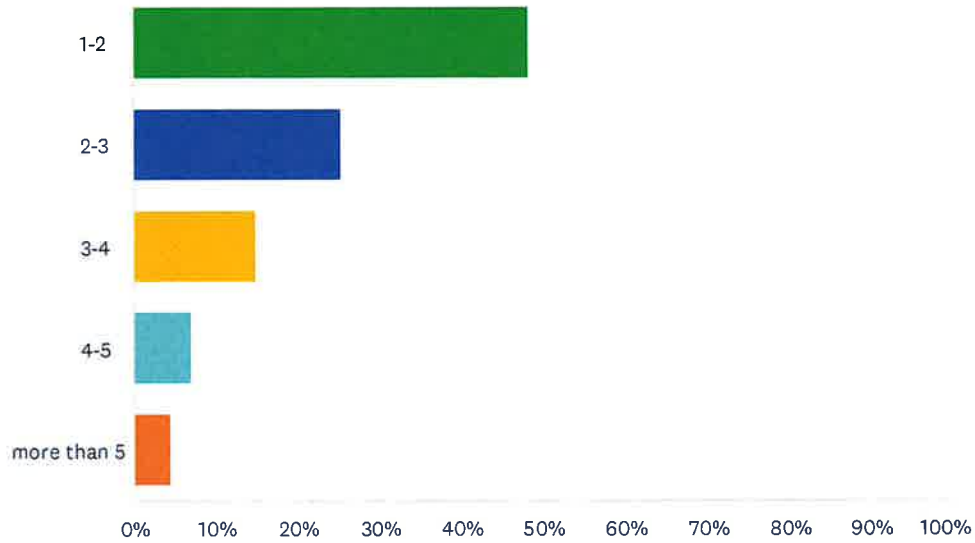


MCH Programming Survey

ANSWER CHOICES	RESPONSES	
Broadway/musicals	56.58%	172
Pop/Rock/Blues	50.99%	155
Jazz	22.04%	67
Country/Western	54.61%	166
World Music	5.92%	18
Gospel/Christian	27.30%	83
Tribute artists	29.61%	90
Classical Music	23.68%	72
Holiday shows	55.59%	169
Theatre	38.82%	118
Comedy	39.47%	120
Magic/Illusionists	17.76%	54
Children's/Family	17.76%	54
Film	8.55%	26
Lecture/Speaker	11.51%	35
Dance/Ballet	19.74%	60
Total Respondents: 304		

Q2 How many MCH Premier Series shows do you usually attend?

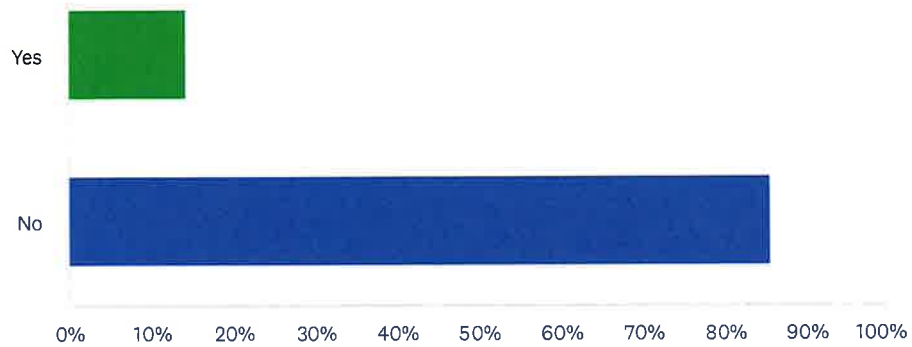
Answered: 296 Skipped: 8



ANSWER CHOICES	RESPONSES	
1-2	48.31%	143
2-3	25.34%	75
3-4	14.86%	44
4-5	7.09%	21
more than 5	4.39%	13
TOTAL		296

Q3 Do you purchase season tickets to the MCH Premier Series?

Answered: 300 Skipped: 4



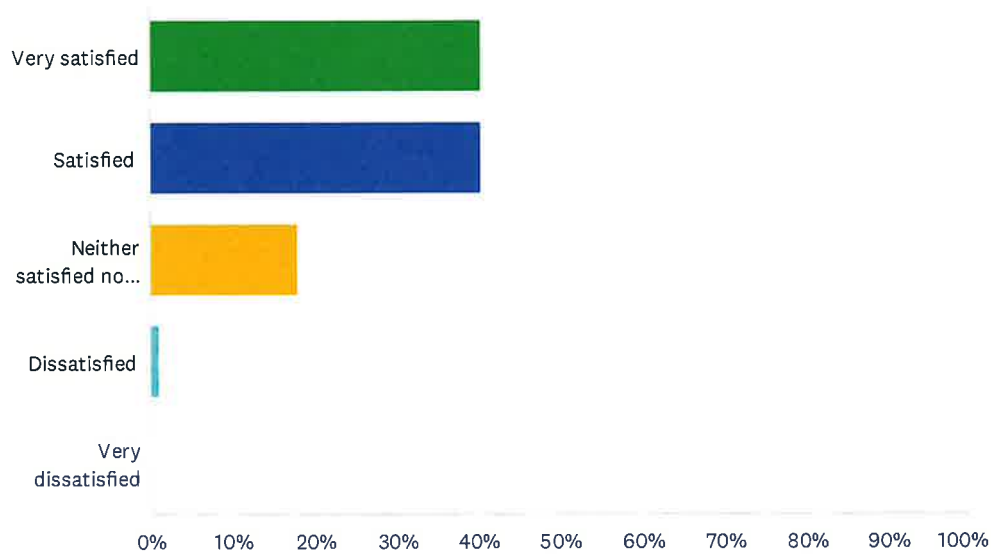
ANSWER CHOICES

RESPONSES

Yes	14.33%	43
No	85.67%	257
TOTAL		300

Q4 How satisfied have you been with the MCH Premier Series programs?

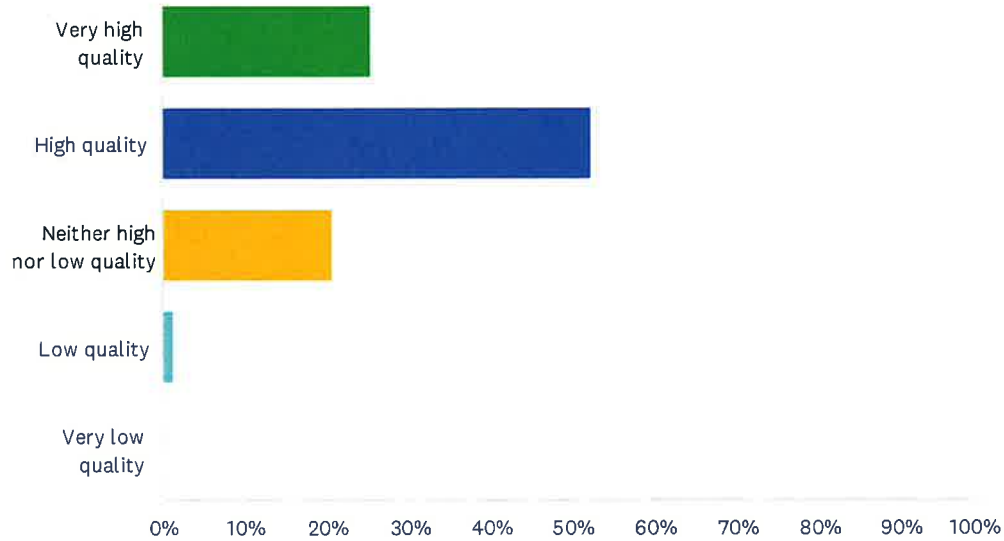
Answered: 296 Skipped: 8



ANSWER CHOICES	RESPONSES	
Very satisfied	40.54%	120
Satisfied	40.54%	120
Neither satisfied nor dissatisfied	17.91%	53
Dissatisfied	1.01%	3
Very dissatisfied	0.00%	0
TOTAL		296

Q5 What do you think of the quality of the MCH Premier Series programs?

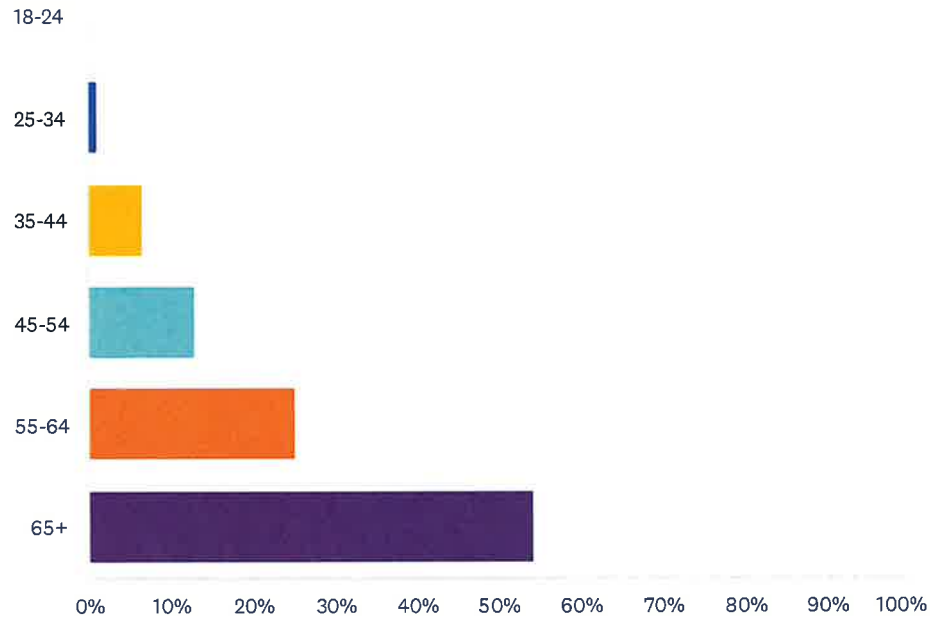
Answered: 295 Skipped: 9



ANSWER CHOICES	RESPONSES	
Very high quality	25.42%	75
High quality	52.54%	155
Neither high nor low quality	20.68%	61
Low quality	1.36%	4
Very low quality	0.00%	0
TOTAL		295

Q6 What is your age group?

Answered: 302 Skipped: 2



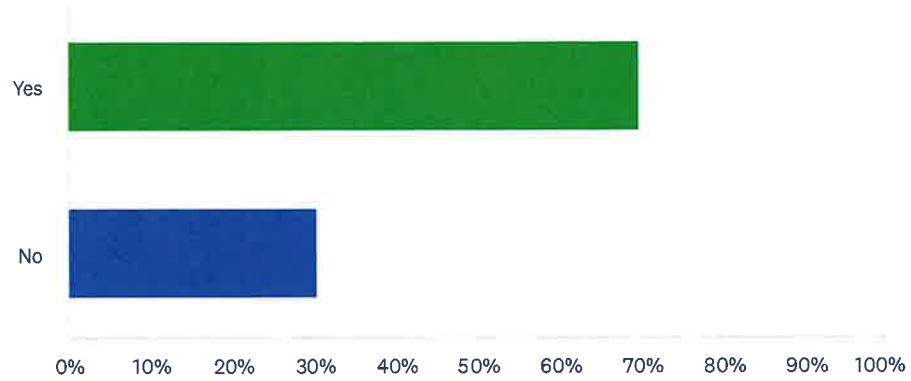
ANSWER CHOICES

RESPONSES

18-24	0.00%	0
25-34	0.99%	3
35-44	6.62%	20
45-54	12.91%	39
55-64	25.17%	76
65+	54.30%	164
TOTAL		302

Q7 Do you live in Harrison County, TX?

Answered: 304 Skipped: 0



ANSWER CHOICES

Yes

No

TOTAL

RESPONSES

69.74%

30.26%

212

92

304

Q8 What artists would you like to see in the future?

Answered: 131 Skipped: 173

Q8 What artists would you like to see in the future?

Answered: 131 Skipped: 173

#	RESPONSES	DATE
1	more up-to-date performers, less tributes	12/10/2022 10:52 AM
2	Pentatonix	12/9/2022 10:39 AM
3	More like The Dogs of Society. Don Henley.	12/8/2022 2:25 PM
4	Motown songs.	12/6/2022 12:28 PM
5	Scott McCreary, Neal McCoy, more tribute artists...	12/6/2022 8:41 AM
6	R&B, Christian Worship	12/5/2022 7:05 PM
7	For King and Country	12/5/2022 6:57 PM
8	Jessica Breanne (out of Nashville, TN but from Marshall, Tx) Jeff Hyde (out of Nashville but from Marshall, Tx.) Why not bring in some of our very talented, professional entertainers that grew up in Marshall and are succeeding in their field of entertainment. Would bring in a lot of population that watched them grow up. Would also bring in new participants to MCH.	12/3/2022 2:16 PM
9	Dale Watson	12/3/2022 9:57 AM
10	Any	12/2/2022 6:44 PM
11	Sting Ray Anthony	12/2/2022 2:14 PM
12	Vince Gill, Gene Watson, Elvis tribute artist Gib Maynard	12/2/2022 2:31 AM
13	Kc and the sunshine band	12/1/2022 6:40 PM
14	Would love to see a comedy show!	12/1/2022 12:53 PM
15	Gary P Nunn, was great ELVIS, always great but wishing they'd not chop songs up too much.	12/1/2022 12:11 PM
16	More tribute bands	12/1/2022 12:06 PM
17	Classic rock artists & or tribute bands/groups	12/1/2022 12:00 PM
18	New Buddy Holly Band Less "cowboy" music	12/1/2022 11:16 AM
19	Manheim steamroller	12/1/2022 11:07 AM
20	Bellamy Brothers, Robert Earl Keen, Curtis Grimes, Josh Abbott Band, Flatt Lonesome, The Farm Hands Quartet	12/1/2022 10:19 AM
21	I would prefer Broadway shows.	12/1/2022 10:04 AM
22	Stingray Anthony Rick Nelson's sons	12/1/2022 8:10 AM
23	Country western	11/30/2022 10:35 PM
24	I would partner with 92.3 The Depot. Both Seth Necessary and Mary Lynne O'neall have long-standing relationships with some of Nashville's best and may be able to attract top-notch talent to Marshall to perform. On another note, I would enjoy seeing some Broadway Musicals such as Wicked, etc... You build it, people will come.	11/30/2022 9:17 PM
25	Stuff for kids	11/30/2022 9:17 PM
26	More local groups like ETBU , Martelli ballet and marshAll isd theatre, dance , orchestra and any other performing groups At those local organizations	11/30/2022 8:56 PM
27	Ray Wylie Hubbard	11/30/2022 8:30 PM
28	Celtic Angels are always good and appeal to a wide audience.	11/30/2022 7:21 PM

MCH Programming Survey

29	Rosie Flores, Jamey Johnson, Yola	11/30/2022 4:22 PM
30	Bellamy Brothers,	11/30/2022 3:31 PM
31	Ballet, theater, musicals, see 1st question	11/30/2022 3:11 PM
32	Darin Morris, Guess Who, Jeff Dunam, Gabriel Iglesias, Jeff Foxworthy,	11/30/2022 2:14 PM
33	Boogie Woogie piano players	11/30/2022 1:46 PM
34	Casting Crowns	11/30/2022 1:32 PM
35	George Strait tribute, Reba tribute	11/30/2022 12:43 PM
36	Asleep at the Wheel, Johnny Rodriguez, Dwight Yoakum, Aaron Watson, Tyler McCollum, Roger Creager, Robert Earl Keen, Tracy Bird, Mark Chesnutt, Neal McCoy, Lee Ann Womack, Travis Tritt and, last but certainly not least, Johnny Rivers.	11/30/2022 11:08 AM
37	I let my seasons tickets lapse this year because I wanted to see less than 50 percent of the list.	11/30/2022 10:54 AM
38	NA	11/30/2022 9:45 AM
39	Gene Watson	11/30/2022 9:45 AM
40	Older country musicians	11/30/2022 9:26 AM
41	Classical guitar, funny (not mean spirited) humor; one or two- person shows/plays	11/30/2022 9:21 AM
42	ADAM HOOD	11/30/2022 9:00 AM
43	I would like to see more plays at this location.	11/30/2022 8:57 AM
44	I know that we are limited in what we can pay and the ones that I would like would cost too much. I have been in this programming business myself and I know that it is a hard job. You are doing a good job, Mr. Barnhart. I had season tickets the first year, but I was not interested in some of the shows this season. I also know that you have to have something for everyone .	11/30/2022 8:51 AM
45	We have lots of local talent as evidenced by the "Voices" concerts, Dale Watson, etc. Maybe a regular series featuring them would attract attendance from more local residents. Make tickets prices lower for these events. A couple of better known entertainers, at higher ticket prices, might bring some out of area attendance.	11/30/2022 7:42 AM
46	I am assuming the Dale Watson concert I saw (the only show I have ever seen in Marshall) was a MCH Premier Series program? I didn't notice if it was but it was great and the theatre is beautiful. resident of Upshur Co.	11/30/2022 7:41 AM
47	Na	11/30/2022 7:41 AM
48	Classical music	11/30/2022 7:27 AM
49	Maybe local area red dirt country.	11/30/2022 7:22 AM
50	Jason Easy Adam Hood Shane Smith and the Saints	11/30/2022 7:04 AM
51	Lauren Daigle,	11/30/2022 7:00 AM
52	Gene watson,MO bandy ,Neil Mc coy	11/30/2022 6:54 AM
53	Gatlin brothers Christmas show. We live in Wood county. Have only attended Larry Gatlin rescheduled show. Glenn, you were so kind to let us in early and even to allow us to eat there. It is a long drive back home in the dark but we did think this year's programs were tempting.	11/30/2022 6:51 AM
54	Pianist/ entertains and versatile	11/30/2022 6:36 AM
55	Tribute to Big Band and Texas Swing	11/30/2022 6:24 AM
56	Reba, 3 Tenors	11/30/2022 6:07 AM
57	Any C/W would be great !!!	11/30/2022 6:02 AM
58	Musicals: White Christmas, Cats, any!	11/30/2022 5:15 AM

MCH Programming Survey

59	60's/70's rock groups and older country groups and performers	11/30/2022 4:24 AM
60	Old school R&B and Contemporary Jazz.	11/30/2022 4:00 AM
61	Big daddy weave . Mercy me. Cogan east. George strait. Alan jackson.	11/30/2022 3:49 AM
62	Beatlemania64	11/30/2022 2:53 AM
63	More Tribute Artists, we have seen several at your venue, and we thoroughly enjoyed them all.	11/30/2022 2:05 AM
64	Comedy, ventriloquist	11/30/2022 12:06 AM
65	Ray Anthony	11/29/2022 11:43 PM
66	Plays, Poetry Readings (Slams), Musical Revues	11/29/2022 11:38 PM
67	Shake, Rattle, and Roll	11/29/2022 11:14 PM
68	Malpass brothers,Marty Stewart, Sue Foley,Dale Watson, Charlie Crockett	11/29/2022 10:32 PM
69	Dancing With The Stars	11/29/2022 9:40 PM
70	Solo spoken arts ala Hal Holbrook Pulitzer Prize-winning plays Off Broadway dramas Tuna Texas series	11/29/2022 9:35 PM
71	Texas Tenors/ The new odyssey	11/29/2022 9:24 PM
72	More original shows rather than tribute shows. Looking forward to Dallas String Quartet!	11/29/2022 9:23 PM
73	Celtic Women; Gospel singers	11/29/2022 9:21 PM
74	Dogs and any magic	11/29/2022 9:13 PM
75	Singer/Songwriters	11/29/2022 8:51 PM
76	Big Bands; Tommy Dorsey, Glenn Miller, Benny Goodman, etc.	11/29/2022 8:23 PM
77	Jake Hooker, Mark Chesnut, Tracy Lawrence, Tracy Byrd, any country artists like these.	11/29/2022 8:15 PM
78	Folk & bluegrass	11/29/2022 7:57 PM
79	More musicians. The Dale Watson show was great. None of the other shows were of interest. Your facility is fabulous, you just need better quality shows. And not so old fashion.	11/29/2022 7:46 PM
80	Tran Siberian Orchestra , Jersey Boys, Mark Lowery, Lion King, anything holiday, Nutcracker Ballet, Christmas carol	11/29/2022 7:42 PM
81	I don't know....thanks for asking.	11/29/2022 7:35 PM
82	BJ Thomas	11/29/2022 7:28 PM
83	Neal McCoy, The Buddy Holley Tribute Show-Winter Dance Party, Floyd Cramer Tribute by his grandson, Willie Nelson, Patsy Cline Tribute	11/29/2022 7:27 PM
84	Maverick City Music Gaithersburg vocal band The crab family	11/29/2022 7:26 PM
85	open	11/29/2022 7:06 PM
86	Bluegrass/acoustic	11/29/2022 7:01 PM
87	Whitey Morgan, Tyler Childers, Sturgill Simpson, Cody Jinks	11/29/2022 6:55 PM
88	The Mavericks . Beatles tribute bands , Elvis tribute artists Doo Wop artists	11/29/2022 6:10 PM
89	Maze	11/29/2022 6:07 PM
90	Stingray Anthony Shake rattle and roll	11/29/2022 5:50 PM
91	John Anderson Monte Warden Kelly Willis	11/29/2022 5:44 PM
92	Gregorian Chant, Broadway musicals, dramatic theater (Tennessee Williams), rock tribute bands	11/29/2022 5:34 PM
93	Jeff Dunham Ralphie May	11/29/2022 5:31 PM

MCH Programming Survey

94	Any comedian (adult and family) Family shows/performances 80s and/or 90s era musicians (any genre).	11/29/2022 5:21 PM
95	Love the good impersonation artist. Love groups from the past,ie temptations ,Beach Boys etc.,	11/29/2022 5:19 PM
96	James Taylor, A tribute artist (high quality), Jeff Foxworthy, Leann Morgan (female comedian), Kenny Loggins, Michael Bolton, Kim Cares	11/29/2022 5:13 PM
97	Texas tenors , Johnny Mathis , Memphis soul, Neal McCoy, Sixties music groups , beach boys , petersons group from Branson .	11/29/2022 5:06 PM
98	Celtic Singers, Neal McCoy, Holiday music and shows I hesitate to say more because I do not know what the budget is, but I do think that you have done a great job getting performances for a wide variety of interests.	11/29/2022 5:06 PM
99	The Chieftains :)	11/29/2022 5:00 PM
100	?	11/29/2022 4:55 PM
101	Phil whickam Matthew west	11/29/2022 4:54 PM
102	Any Texas Country artists such as Larry Joe Taylor, Davin James,Tejas Brothers, Gary P Nunn...etc	11/29/2022 4:54 PM
103	Tom Russell	11/29/2022 4:53 PM
104	Tanya Tucker!☺	11/29/2022 4:45 PM
105	Neil Diamond, James Taylor	11/29/2022 4:42 PM
106	Rain(Beatles Tribute)	11/29/2022 4:39 PM
107	Kenny G	11/29/2022 4:35 PM
108	My sister and I have thoroughly enjoyed many shows, especially the Beatles tribute, Elvis, Buddy Holly and Richie Valens, etc. Recently the George Strait was awesome, too. We enjoyed seeing ETBU's Footlose, and looking forward to White Christmas. These are the shows we enjoy most. Thank you so much for bringing these to Marshall. More of the same PLEASE. LOL	11/29/2022 4:23 PM
109	90s Country, off Broadway touring shows, classic rock artists	11/29/2022 4:20 PM
110	The Blues Brothers,	11/29/2022 4:18 PM
111	Original songwriters.	11/29/2022 4:17 PM
112	Jeff Dunham. Jordan Peterson. Elon Musk	11/29/2022 4:11 PM
113	Too many to list. Loved Bill Haley, Jr.! Wow. I like many with Wolfman Jack Entertainment (wjent.com)	11/29/2022 4:06 PM
114	More southern gospel: Jeff and Sheri Easter (again), The Hoppers, The Sound, The Triumph Quartet, The Tribute Quartet, Gold City, Goodman Revival, Karen Peck and New River, The Collingsworth Family, Mylon Hayes Family, etc.	11/29/2022 4:03 PM
115	Miranda Lambert Most pop artists Bands from 70s/80s	11/29/2022 4:02 PM
116	50's, 60's, 70's, 80's rock and roll; symphony music. I'm not on any sort of ticket plan but I do get emails so as to choose particular events to attend. I live in Longview and absolutely LOVE the Memorial City Hall! And I usually try to find a restaurant nearby after attending a performance.	11/29/2022 4:01 PM
117	Andy Griggs, Allen Frizzell, A tribute to Waylon Jennings, Merle Haggard, Johnny Cash and June Carter	11/29/2022 4:00 PM
118	I would love to see the Nutcracker.	11/29/2022 3:56 PM
119	Jon Anderson Gene Watson Johnny Rodriguez John Conlee Radney Foster	11/29/2022 3:50 PM
120	You are doing great. Your shows are fantastic.	11/29/2022 3:47 PM
121	Larry Gatlin, Lee Greenwood, TG Sheppard, Steve Wariner	11/29/2022 3:46 PM

MCH Programming Survey

122	Eagles/ CCR ☺	11/29/2022 3:42 PM
123	Collin Raye	11/29/2022 3:37 PM
124	Some of the Christian artists that come to LeTourneau and the Tyler Area (KVNE).	11/29/2022 3:33 PM
125	Frank Sinatra Tribute again.	11/29/2022 3:30 PM
126	I would love to see concerts rather than tributes. Anything from top 40 to country. I would also love to see live theatre productions by professional cast or professional ballet companies.	11/29/2022 3:30 PM
127	Gene Watson, Tanya Tucker, Kenny Shepherd	11/29/2022 3:30 PM
128	Leann Womack , Neal McCoy . Local s that are building career .	11/29/2022 3:29 PM
129	I would to see Marcia Ball and Dale Watson again.	11/29/2022 3:25 PM
130	No particular artist in mind. But preference goes to original singer/songwriters. Regardless of genre, original songs deserve an audience.	11/29/2022 3:23 PM
131	Keb mo, Marcia Ball, Marc Broussard	11/29/2022 3:23 PM



MEMORIAL CITY HALL
PERFORMANCE CENTER

Memo

To: City Council, City of Marshall

From: Glenn Barnhart- Manager, Memorial City Hall Performance Center

Date: 2/16/2023

Re: Income for MCH for 2022

2022 Income

Premier Series & Special Events	\$12,226.18
Rentals	\$52,877.55
Total	\$65,103.73

Glenn Barnhart

Manager-Memorial City Hall Performance Center
barnhart.glenn@marshalltexas.net



TO: City Council
DATE: February 23, 2023
ITEM #: 9.D
SUBJECT: Presentation from Insyteful Re: Rebranding of the City of Marshall

Recommendation for Action: Vote to Approve

Staff Contact:

Background:

Discussion:

Budget Cost:

Prepared by: LeAnne White, Economic Development Manager

Attachments: None



TO: City Council
DATE: February 23, 2023
ITEM #: 9.E
SUBJECT: 2023 Police Report

Recommendation for Action: N/A

Staff Contact:

Background: This is the 2023 Annual Police Report and 2022 Racial Profiling Report.

Discussion: Chief Carruth will present these reports.

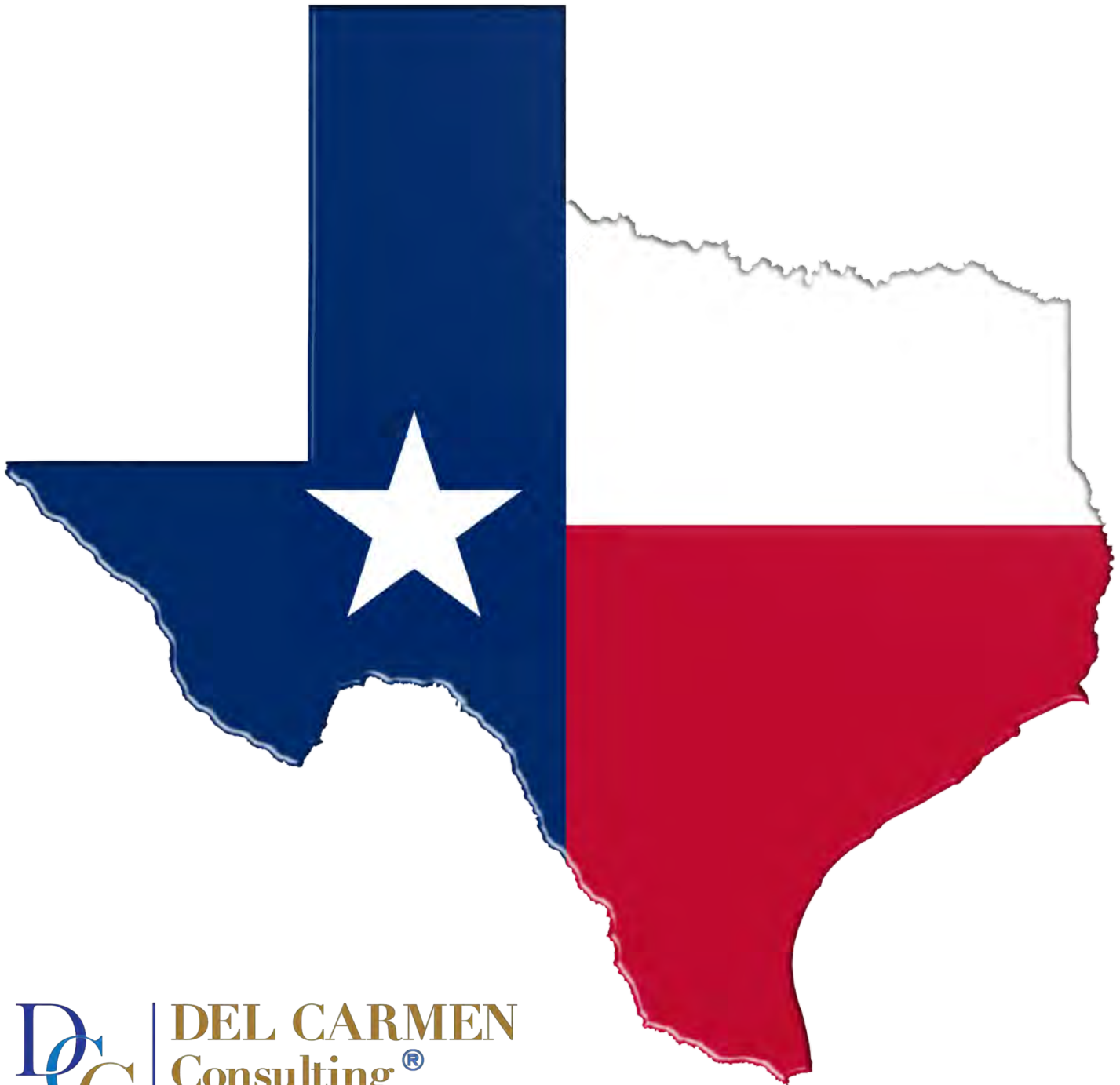
Budget Cost: N/A

Prepared by: Wendy Herigon, Administrative Assistant

Attachments: 1. 2022 Racial Profiling Report - Marshall Police Department

2022 Racial Profiling Report

Marshall Police Department



"Dr. Alex del Carmen's work on racial profiling exemplifies the very best of the Sandra Bland Act, named after my daughter. My daughter's pledge to fight for injustice is best represented in the high quality of Dr. del Carmen's reports which include, as required by law, the data analysis, audits, findings and recommendations. I commend the agencies that work with him as it is clear that they have embraced transparency and adherence to the law."

-Quote by Geneva Reed (Mother of Sandra Bland)



January 26, 2023

Marshall City Council
400 S. Alamo
Marshall, TX 75670

Dear Distinguished Members of the City Council,

In 2001 the Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. During the last calendar year, the Marshall Police Department, in accordance with the law, has collected and reported traffic and motor vehicle related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements were implemented. Further, in 2017 the Sandra Bland Act was passed and signed into law (along with HB 3051, which introduced new racial and ethnic designations). The Sandra Bland Law currently requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All of these requirements have been met by the Marshall Police Department and are included in this report.

This report consists of three sections with information on motor vehicle-related contacts. In addition, when appropriate, documentation is included which demonstrates the manner in which the Marshall Police Department has complied with the Texas Racial Profiling Law. In section one, you will find the table of contents. Section two documents compliance by the Marshall Police Department relevant to the requirements established in the Texas Racial Profiling Law. That is, you will find documents relevant to the training of all police personnel on racial profiling prevention and the institutionalization of the compliment and complaint processes, as required by law.

Finally, section three contains statistical data relevant to contacts (as defined by the law) which were made during the course of motor vehicle stops that took place between 1/1/22 and 12/31/22. Further, this section contains the Tier 2 form, which is required to be submitted to this particular organization and the law enforcement agency's local governing authority by March 1 of each year. The data in this report has been analyzed and compared to information derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report.

The last section of the report includes the original draft of the Texas Racial Profiling Law, SB1074, as well as the Sandra Bland Act (current law). Also in this section, a list of requirements relevant to the Racial Profiling Law, as established by TCOLE (Texas Commission on Law Enforcement), is included. The findings in this report support the Marshall Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.

Table of Contents

Introduction

Letter to Council Members	2
Table of Contents	3

Responding to the Law

Public Education on Filing Compliments and Complaints	4
Racial Profiling Course Number 3256	5
Reports on Compliments and Racial Profiling Complaints	11
Tier 2 Data (Includes tables)	13

Analysis and Interpretation of Data

Tier 2 Motor Vehicle-Related Contact Analysis	23
Comparative Analysis	24
Summary of Findings	26
Checklist	27

Legislative and Administrative Addendum

TCOLE Guidelines	29
The Texas Law on Racial Profiling	34
Modifications to the Original Law	41
Racial and Ethnic Designations	49
The Sandra Bland Act	50
Marshall Police Department Racial Profiling Policy	65

Public Education on Responding to Compliments and Complaints

Informing the Public on the Process of Filing a Compliment or Complaint with the Marshall Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Marshall Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by a Marshall Police Officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

All Marshall Police Officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Marshall Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Marshall has been included in this report.

It is important to recognize that the Chief of the Marshall Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Marshall Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

Racial Profiling Course 3256

Texas Commission on Law Enforcement

September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H. Exemption from reporting – audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)



2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

- A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.
- B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole .
- C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.
- D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.
- E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.



3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
2. The driver and passengers are questioned about things that do not relate to the traffic violation
3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)



3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

A. Drug courier profile (adapted from a profile developed by the DEA)

1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
3. Vehicle is rented
4. Driver is a young male, 20-35
5. No visible luggage, even though driver is traveling
6. Driver was over-reckless or over-cautious in driving and responding to signals
7. Use of air fresheners

B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

A. Thinking about the totality of circumstances in a vehicle stop

B. Vehicle exterior

1. Non-standard repainting (esp. on a new vehicle)
2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)

C. Pre-stop indicators

1. Not consistent with traffic flow
2. Driver is overly cautious, or driver/passengers repeatedly look at police car
3. Driver begins using a car- or cell-phone when signaled to stop
4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior

1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074: <http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

*Report on
Compliments
and Racial
Profiling
Complaints*



Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/22-12/31/22 based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.



A check above indicates that the Marshall Police Department has not received any complaints, on any members of its police services, for having violated the Texas Racial Profiling Law during the time period of 1/1/22-12/31/22.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint Number	Alleged Violation	Disposition of the Case

Additional Comments:

Tables Illustrating Motor Vehicle-Related Contacts

TIER 2 DATA

TOTAL STOPS: 5,275

STREET ADDRESS OR APPROXIMATE LOCATION OF STOP.

City Street	2,558
US Highway	1,771
State Highway	722
County Road	5
Private Property	219

WAS RACE OR ETHNICITY KNOWN PRIOR TO STOP?

Yes	444
No	4,831

RACE OR ETHNICITY

Alaska Native/American Indian	11
Asian/Pacific Islander	33
Black	2,442
White	1,952
Hispanic/Latino	836

GENDER

Female Total: 2,100

Alaska Native/American Indian	4
Asian/Pacific Islander	11
Black	1,017
White	813
Hispanic/Latino	255

Male Total: 3,175

Alaska Native/American Indian	7
Asian/Pacific Islander	22
Black	1,426
White	1,139
Hispanic/Latino	581

REASON FOR STOP?

Violation of Law Total: 319

Alaska Native/American Indian	0
Asian/Pacific Islander	2
Black	133
White	131
Hispanic/Latino	53

Pre-existing Knowledge Total: 167

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	76
White	58
Hispanic/Latino	33

Moving Traffic Violation Total: 3,092

Alaska Native/American Indian	8
Asian/Pacific Islander	23
Black	1,364
White	1,189
Hispanic/Latino	508

TIER 2 DATA

Vehicle Traffic Violation Total: 1,697

Alaska Native/American Indian	3
Asian/Pacific Islander	8
Black	870
White	574
Hispanic/Latino	242

Contraband (in plain view) Total: 20

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	13
White	6
Hispanic/Latino	1

WAS SEARCH CONDUCTED?

	YES	NO
Alaska Native/American Indian	0	11
Asian/Pacific Islander	1	32
Black	284	2,159
White	58	1,894
Hispanic/Latino	27	809
TOTAL	370	4,905

Probable Cause Total: 236

Alaska Native/American Indian	0
Asian/Pacific Islander	1
Black	196
White	25
Hispanic/Latino	14

Inventory Total: 7

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	5
White	2
Hispanic/Latino	0

REASON FOR SEARCH?

Consent Total: 101

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	64
White	25
Hispanic/Latino	12

Incident to Arrest Total: 6

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	6
White	0
Hispanic/Latino	0

TIER 2 DATA

WAS CONTRABAND DISCOVERED?

	YES	NO
Alaska Native/American Indian	0	0
Asian/Pacific Islander	0	1
Black	225	59
White	37	21
Hispanic/Latino	12	15
TOTAL	274	96

Did the finding result in arrest?

	YES	NO
Alaska Native/American Indian	0	0
Asian/Pacific Islander	0	0
Black	35	190
White	4	33
Hispanic/Latino	1	11
TOTAL	40	234

DESCRIPTION OF CONTRABAND

Drugs Total: 241

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	201
White	30
Hispanic/Latino	10

Currency Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Weapons Total: 13

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	12
White	1
Hispanic/Latino	0

Alcohol Total: 30

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	24
White	4
Hispanic/Latino	2

TIER 2 DATA

Stolen Property Total: 2

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	2
White	0
Hispanic/Latino	0

Other Total: 15

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	10
White	5
Hispanic/Latino	0

RESULT OF THE STOP

Verbal Warning Total: 3,023

Alaska Native/American Indian	6
Asian/Pacific Islander	16
Black	1,526
White	1,004
Hispanic/Latino	471

Written Warning Total: 881

Alaska Native/American Indian	2
Asian/Pacific Islander	6
Black	340
White	419
Hispanic/Latino	114

Citation Total: 1,263

Alaska Native/American Indian	3
Asian/Pacific Islander	11
Black	498
White	506
Hispanic/Latino	245

Written Warning and Arrest Total: 4

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	4
White	0
Hispanic/Latino	0

Citation and Arrest Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Arrest Total: 104

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	75
White	23
Hispanic/Latino	6

TIER 2 DATA

ARREST BASED ON

Violation of Penal Code Total: 40

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	35
White	4
Hispanic/Latino	1

Violation of Traffic Law Total: 8

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	5
White	1
Hispanic/Latino	2

Violation of City Ordinance Total: 5

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	3
White	2
Hispanic/Latino	0

Outstanding Warrant Total: 55

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	36
White	16
Hispanic/Latino	3

Was physical force used resulting in bodily injury during the stop?

	YES	NO
Alaska Native/American Indian	0	11
Asian/Pacific Islander	0	33
Black	0	2,443
White	0	1,952
Hispanic/Latino	0	836
TOTAL	0	5,275

Tables Illustrating Motor Vehicle Related Contact Data

Table 1. Citations and Warnings

Race/ Ethnicity	All Contacts	Citations	Verbal Warning	Written Warning	Contact Percent	Citation Percent	Verbal Percent	Written Percent
Alaska Native/ American Indian	11	3	6	2	0%	0%	0%	0%
Asian/ Pacific Islander	33	11	16	6	1%	1%	1%	1%
Black	2,443	498	1,526	340	46%	39%	50%	39%
White	1,952	506	1,004	419	37%	40%	33%	48%
Hispanic/ Latino	836	245	471	114	16%	19%	16%	13%
TOTAL	5,275	1,263	3,023	881	100%	100%	100%	100%

Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households that have vehicle access.

Race/Ethnicity	Contact Percentage	Households with Vehicle Access
Alaska Native/American Indian	0%	1%
Asian/Pacific Islander	1%	1%
Black	46%	34%
White	37%	60%
Hispanic/Latino	16%	60%
TOTAL	100%	100%

Table 3. Motor Vehicle Searches and Arrests.

Race/Ethnicity	Searches	Consent Searches	Arrests
Alaska Native/American Indian	0	0	0
Asian/Pacific Islander	1	0	0
Black	284	64	79
White	58	25	23
Hispanic/Latino	27	12	6
TOTAL	370	101	108

Table 4. Instances Where Peace Officers Used Physical Force Resulting in Bodily Injury

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Arrest	Location of Stop	Reason for Stop

Table 5. Search Data

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Found No	Arrests	Percent Searches	Percent Contraband Found	Percent No Contraband	Percent Arrest
Alaska Native/ American Indian	0	0	0	0	0%	0%	0%	0%
Asian/ Pacific Islander	1	0	1	0	0%	0%	1%	0%
Black	284	225	59	79	77%	82%	61%	73%
White	58	37	21	23	16%	14%	22%	21%
Hispanic/ Latino	27	12	15	6	7%	4%	16%	6%
TOTAL	370	274	96	108	100%	100%	100%	100%

Table 6. Report on Audits.

The following table contains data regarding the number and outcome of required data audits during the period of 1/1/22-12/31/22.

Number of Data Audits Completed	Date of Completion	Outcome of Audit
1	03/01/22	Data was valid and reliable
2	06/01/22	Data was valid and reliable
3	09/01/22	Data was valid and reliable
4	12/01/22	Data was valid and reliable

ADDITIONAL COMMENTS:

Table 7. Instance Where Force Resulted in Bodily Injury.

Race/Ethnicity	Number	Percent
Alaska Native/American Indian	0	0%
Asian/Pacific Islander	0	0%
Black	0	0%
White	0	0%
Hispanic/Latino	0	0%
TOTAL	0	0%

Table 8. Reason for Arrests from Vehicle Contact

Race/ Ethnicity	Violation of Penal Code	Violation of Traffic Law	Violation of City Ordinance	Outstanding Warrant	Percent Penal Code	Percent Traffic Law	Percent City Ordinance	Percent Warrant
Alaska Native/ American Indian	0	0	0	0	0%	0%	0%	0%
Asian/ Pacific Islander	0	0	0	0	0%	0%	0%	0%
Black	35	5	3	36	88%	63%	60%	65%
White	4	1	2	16	10%	13%	40%	29%
Hispanic/ Latino	1	2	0	3	3%	25%	0%	5%
TOTAL	40	8	5	55	100%	100%	100%	100%

Table 9. Contraband Hit Rate

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Hit Rate	Search Percent	Contraband Percent
Alaska Native/ American Indian	0	0	0%	0%	0%
Asian/ Pacific Islander	1	0	0%	0%	0%
Black	284	225	79%	77%	82%
White	58	37	64%	16%	14%
Hispanic/Latino	27	12	44%	7%	4%

Analysis and Interpretation of Data

In 2001, the Texas Legislature passed Senate Bill 1074, which eventually became the Texas Racial Profiling Law. This particular law came into effect on January 1, 2002 and required all police departments in Texas to collect traffic-related data and report this information to their local governing authority by March 1 of each year. This law remained in place until 2009, when it was modified to include the collection and reporting of all motor vehicle-related contacts in which a citation was issued or an arrest was made. Further, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individuals before detaining them. In addition, it became a requirement that agencies report motor vehicle-related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1 of each year. The purpose in collecting and disclosing this information is to determine if police officers in any particular municipality are engaging in the practice of racially profiling minority motorists.

One of the central requirements of the law is that police departments interpret motor vehicle-related data. Even though most researchers would likely agree that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is in fact very difficult to determine if individual police officers are engaging in racial profiling from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As previously noted, in 2009 the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1, 2010. The changes included, but are not limited to, the re-definition of a contact to include motor vehicle-related contacts in which a citation was issued or an arrest was made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. The 2009 law also required adding "Middle Eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1 of each year.

More recently, in 2017 the Texas Legislators passed HB 3051 which removed the Middle Eastern data requirement while standardizing the racial and ethnic categories relevant to the individuals that came in contact with police. In addition, the Sandra Bland Act (SB 1849) was passed and became law. Thus, the most significant legislative mandate (Sandra Bland Act) in Texas history regarding data requirements on law enforcement contacts became law and took effect on January 1, 2018. The Sandra Bland Act not only currently requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

1. A comparative analysis of the information compiled (under Article 2.133):

- a. Evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;*
- b. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;*
- c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.*

2. Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

As part of their effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Marshall Police Department commissioned the analysis of its 2022 contact data. Hence, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2022 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians (Middle Easterners and individuals belonging to the “other” category, as optional categories), who came in contact with police in the course of a motor vehicle-related contact and were either issued a ticket, citation, or warning or an arrest was made. Also included in this data were instances when a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest, and use of physical force resulting in bodily injury.

The additional data analysis performed was based on a comparison of the 2022 motor vehicle contact data with a specific baseline. When reading this particular analysis, one should consider that there is disagreement in the literature regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Marshall Police Department accepted our recommendation to rely, as a baseline measure, on the Fair Roads Standard. This particular baseline is established on data obtained through the U.S. Census Bureau (2020) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It should be noted that the census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless whether they are among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only, thus excluding individuals who may have come in contact with the Marshall Police Department in 2022 but live outside city limits. In some jurisdictions the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

In 2002, some civil rights groups in Texas expressed their concern and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). In essence this constitutes a comparison that may result in ecological fallacy. Despite this risk, as noted earlier, the Marshall Police Department accepted the recommendation to utilize this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the city of Marshall.

Tier 2 (2022) Motor Vehicle-Related Contact Analysis

When examining the enhanced and more detailed Tier 2 data collected in 2022, it was evident that most motor vehicle-related contacts were made with Blacks, followed by Whites. Of those who came in contact with police, most tickets or citations were issued to Whites and Blacks; this was followed by Hispanics. However, in terms of written warnings, most of these were issued to Whites, followed by Blacks.

On searches and arrests, the data showed that most searches took place among Blacks. When considering all searches, most were consented by Blacks and Whites, while most custody arrests were also of Blacks. Overall, most searches resulted in contraband; of those that produced contraband, most were of Blacks; this was followed by Whites. Of the searches that did not produce contraband, most were of Blacks. Most arrests were made of Blacks. Most of the arrests that originated from a violation of the penal code involved Blacks. Overall, the police department does not report any instances where force was used that resulted in bodily injury.

Comparative Analysis

A comprehensive analysis of the motor vehicle contacts to the census data relevant to the number of “households” in Marshall who indicated in the 2020 census that they had access to vehicles, produced interesting findings. Specifically, the percentage of Whites, Asians, and American Indians who came in contact with police was the same or lower than the percentage of White, Asian, and American Indian households in Marshall that claimed in the 2020 census to have access to vehicles. The opposite was true of Blacks and Hispanics. That is, a higher percentage of Blacks and Hispanics came in contact with police than the percentage of Black and Hispanic households in Marshall that claimed in the 2020 census to have access to vehicles.

The comprehensive analysis of the searches resulting in contraband shows that the most significant contraband hit rate is of Blacks. This was followed by Whites and Hispanics. This means that among all searches performed in 2022, the most significant percentage of these that resulted in contraband was among Blacks. The lowest contraband hit rate was among Asians.

Summary of Findings

As referenced earlier, the most recent Texas Racial Profiling Law requires that police departments perform data audits in order to validate the data being reported. Consistent with this requirement, the Marshall Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in Table 6, the audit performed reveals that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

While considering the findings produced as a result of this analysis, it is recommended that the Marshall Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected), which may prove to be useful when determining the nature of the contacts police officers are making with all individuals.

As part of this effort, the Marshall Police Department should continue to:

- 1) Perform an independent analysis on contact and search data in the upcoming year.
- 2) Commission data audits in 2023 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The comprehensive data analysis included in this report serves as evidence that the Marshall Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of Tier 2 data, and ensures that the practice of racial profiling will not be tolerated.

Checklist

The following requirements were met by the Marshall Police Department in accordance with The Texas Racial Profiling Law:

- ✔ Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- ✔ Include in the racial profiling policy, a statement indicating prohibition of any peace officer employed by the Marshall Police Department from engaging in racial profiling.
- ✔ Implement a process by which an individual may file a complaint regarding racial profiling violations.
- ✔ Provide public education related to the compliment and complaint process.
- ✔ Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- ✔ Collect, report and analyze motor vehicle data (Tier 2).
- ✔ Commission Data Audits and a Search Analysis.
- ✔ Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- ✔ Produce an annual report on police contacts (Tier 2) and present this to the local governing body and TCOLE by March 1, 2023.
- ✔ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.



Legislative & Administrative
Addendum



TCOLE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of **what** must be accomplished by an agency but allows wide latitude in determining **how** the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling;
and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) ~~[(7)]~~ the date of conviction; and

(9) ~~[(8)]~~ the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

Modifications to the Original Law

(H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

- (A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);
- (B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);
- (C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);
- (D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION _____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or~~

~~municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race":

~~[(1) "Race]~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~[(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any ~~[each]~~ person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense]~~;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description ~~[the type]~~ of the contraband or evidence ~~[discovered]~~;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle ~~[existed and the facts supporting the existence of that probable cause];~~

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop~~[, including a description of the warning or a statement of the violation charged].~~

SECTION _____. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) ~~[means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].~~

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each ~~[local]~~ law enforcement agency shall submit a report containing the incident-based data ~~[information]~~ compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency ~~[in a manner approved by the agency].~~

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities ~~[determine the prevalence of racial profiling by peace officers employed by the agency]; and~~

(B) examine the disposition of motor vehicle ~~[traffic and pedestrian]~~ stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [the] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic or pedestrian]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle ~~[traffic and pedestrian]~~ stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle ~~[traffic and pedestrian]~~ stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle ~~[traffic and pedestrian]~~ stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle ~~[traffic and pedestrian]~~ stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle ~~[traffic or pedestrian]~~ stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION _____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION _____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION _____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION _____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

- (1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure;
or

(3) a commission rule.

SECTION _____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) [of a particular descent, including Caucasian, African, Hispanic,] Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino [~~Native American, or Middle Eastern descent~~].

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) [of a particular descent, including Caucasian, African, Hispanic,] Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino [~~or Native American descent~~].

SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Sandra Bland Act

(S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision

(1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B

or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].

(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown

otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,], at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

- (a) The commission shall:
- (1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;
 - (2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;
 - (3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;
 - (4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;
 - (5) revise, amend, or change rules and procedures if necessary;
 - (6) provide to local government officials consultation on and technical assistance for county jails;
 - (7) review and comment on plans for the construction and major modification or renovation of county jails;
 - (8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;
 - (9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;
 - (10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;
 - (11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;
 - (12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;
 - (13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;
 - (14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;
 - (15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;
 - (16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:
 - (A) common issues concerning jail administration;
 - (B) examples of successful strategies for maintaining compliance with state law and the rules,

standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A) determine if a prisoner is pregnant; and

(B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read

as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and
(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;
(2) an attempted suicide;
(3) a death;
(4) a serious bodily injury, as that term is defined by
Section 1.07, Penal Code;
(5) an assault;
(6) an escape;
(7) a sexual assault; and
(8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other

than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this

section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

- (1) topics selected by the agency; and
- (2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:
 - (A) civil rights, racial sensitivity, and cultural diversity;
 - (B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]
 - (C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and
 - (D) unless determined by the agency head to be inconsistent with the officer's assigned duties:
 - (i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and
 - (ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read

as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information

relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
- (D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
- (E) the location of the stop; and
- (F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

- (A) the Texas Commission on Law Enforcement; and
- (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

- (A) the person's gender; and
- (B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search

and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship,

available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal

Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and
(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

Senate Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:
Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:
Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

Date

Governor

Chief Clerk of the House

**MARSHALL
POLICE DEPARTMENT
RACIAL PROFILING POLICY**

	MARSHALL POLICE DEPARTMENT	
	Policy 2.2 Bias Based Policing	
	Effective Date: 11/14/18	Replaces:
	Approved:  Cliff Carruth Chief of Police	
	Reference: TBP 2.01	

I. POLICY

We are committed to a respect for constitutional rights of individuals in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, national origin, ethnicity, age, or religion. We live and work in communities very diverse in population: respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions, particularly stops of individuals (for traffic and other purposes), investigative detentions, arrests, searches, and seizures of persons or property, shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U.S. Constitution, Article I, Section 9 of the Texas Constitution, statutory authority, and case law construing these provisions. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions which support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, sex, sexual orientation, gender, national origin, ethnicity, age, or religion. Officers shall base all such actions on a reasonable suspicion or probable cause that the person or an occupant of a vehicle committed an offense.

The purpose of this policy is to reaffirm the Marshall Police Department's commitment to unbiased policing in all its encounters between officer and any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of Departmental policy and the Law.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement contacts between officers and the public.

II. PURPOSE

The purpose of this order is to provide general guidance on reducing the presence of bias in law enforcement actions, to identify key contexts in which bias may influence these actions, and emphasize the importance of the constitutional guidelines within which we operate.

III. DEFINITIONS

Most of the following terms appear in this order. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- A. Bias: Prejudice or partiality which may be based on preconceived ideas, a person's upbringing, culture, experience, or education.
- B. Biased policing: Stopping, detaining, searching, or attempting to search, citing or using force against a person based upon his or her race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- C. Ethnicity: A cluster of characteristics which may include race but also cultural characteristics or traits which are shared by a group with a common experience or history.
- D. Gender: Unlike sex, a psychological classification based on cultural characteristics or traits.
- E. Probable cause: Facts or apparent facts and circumstances within an officer's knowledge and of which the officer had reasonable, trustworthy information to lead a reasonable person to believe that an offense has been or is being committed, and that the suspect has committed it.
- F. Race: A category of people of a particular decent, including Caucasian, African, Hispanic, Asian, or Native American descent. As distinct from ethnicity, race only refers to physical characteristics sufficiently distinctive to group people under a classification.
- G. Racial and Bias Based Profiling: A law enforcement-initiated action based on an individual's race, ethnicity, national origin, ethnic background, gender, sexual

orientation, religion, economic status, age, cultural group, or any other identifiable group, rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. Racial and Bias Based profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

- H. Acts Constituting Racial and Biased Based Profiling: Acts initiating law enforcement action, such as motor vehicle stops, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, national origin or ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group, rather than upon the individual's behavior, information identifying the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.
- I. Reasonable suspicion: Articulable, objective facts which lead an experienced officer to suspect that a person has committed, is committing, or may be about to commit a crime. A well-founded suspicion is based on the totality of the circumstances and does not exist unless it can be articulated. Reasonable suspicion supports a stop of a person. Courts require that stops based on reasonable suspicion be "objectively reasonable."
- J. Sex: A biological classification, male or female, based on physical and genetic characteristics.
- K. Stop: The detention of a subject for a brief period of time, based on reasonable suspicion. A stop is an investigative detention.
- L. Contact: A law enforcement contact, including motor vehicle stop, for an alleged violation of law of ordinance.

IV. Prohibition Against Racial and Bias Based Profiling

- A. Peace officers of the Department are strictly prohibited from engaging in racial or bias based profiling. The prohibition against racial or bias based profiling does not preclude the use of race, ethnicity, national origin, or ethnic background, gender, age, cultural group, or any other identifiable group, as factors in a detention decision by a peace officer. Race, ethnicity, national origin, gender or age may be legitimate factors in such a decision when used as part of a description of a suspect or witness for whom a peace officer is searching.
- B. Peace officers of the Department are prohibited from requesting consent to search unless there is reasonable basis of criminal activity. In all cases where consent is requested, whether granted or not, the officer will document the facts which constitute the reasonable basis of criminal activity and the name and date of birth

of the subject who granted consent in the comments section of the Mobile Data Computer (MDC), electronic citation writer and or necessary reports. When any intelligence is gathered during the consent search the officer will forward that intelligence to the appropriate division through departmental e-mail or by memorandum. Officers who do not have a MDC will be required to document consent to searches in an incident report.

- C. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to Department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
- D. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety. When concluding an encounter, personnel should thank him or her for cooperating.
- E. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their name, departmental identification number, and name of the immediate supervisor. Officers are not required to stop law enforcement activities to provide information to bystanders or persons not involved with said law enforcement activity. Officers are not required to identify themselves when doing so would compromise an official investigation.
- F. All personnel are accountable for their actions. Personnel shall justify their actions when required.

Supervisory responsibilities

- A. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties. Supervisors shall identify and correct instances of bias in the work of their subordinates.
- B. Supervisors shall use the disciplinary mechanisms of the Department to ensure compliance with this order and the constitutional requirements of law enforcement.
- C. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are key to maintaining community trust in law enforcement. Supervisors shall continually reinforce the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.
- D. Supervisors are reminded that biased enforcement of the laws engenders not only mistrust of law enforcement, but increases safety risks to personnel. Lack of

control over bias also exposes the Department to the consequences of liability. Supervisors shall be held accountable for repeated instances of biased enforcement by their subordinates.

- E. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable.
- F. Supervisors shall facilitate the filing of any complaint about law enforcement service.

Disciplinary consequences

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

Training (TBP: 2.01)

Officers shall complete all training required by state law regarding bias based profiling.

V. COMPLAINTS

Complaint Process and Public Education:

- A. Any person who believes a peace officer employed by the Department has engaged in racial or biased based profiling may file a complaint with the Department, and no person shall be discouraged, intimidated, or coerced from filing such a complaint, or be discriminated against because they have filed such a complaint.
- B. The Department shall accept and investigate citizen complaints alleging racial or biased based profiling by its peace officers. Such complaints shall be in writing, or the city employee, officer, or official receiving the complaint should reduce the same to writing, and should include the time, place, and details of the incident of alleged racial or biased based profiling, the identity or description of the peace officer or officers involved, and the identity and manner of contacting the complainant.
- C. Any Department employee who receives a citizen complaint alleging racial or biased based profiling shall forward the complaint to the Internal Affairs Section within 24 hours of receipt of the complaint. All such complaints shall be reviewed

and investigated by the Internal Affairs Section or assigned supervisor within a reasonable period of time, and the results of the review and investigation shall be filed with the Internal Affairs Section.

- D. In investigating a complaint alleging racial or biased based profiling, the Internal Affairs investigator or supervisor assigned shall seek to determine if the officer who is the subject of the complaint has engaged in a pattern of racial or biased based profiling that includes multiple acts constituting racial or biased based profiling for which there is no reasonable, credible explanation based on established police and law enforcement procedures.
- E. In the event a complaint of racial or biased based profiling filed by an individual involves an occurrence that was recorded on audio or video, the individual assigned the investigation shall, upon commencement of the investigation of the complaint and upon written request of the officer, promptly provide a copy of the recording to the peace officer who is a subject of the complaint.
- F. The Marshall Police Department shall provide education to the public concerning the racial profiling complaint process. A summary of the public education efforts made during the preceding year shall be included with the annual report filed with T.C.O.L.E and the governing body of the City Marshall under Section 20.28 below.
- G. Any peace officer who is found, after investigation, to have engaged in racial profiling in violation of this policy shall be subject to corrective action, which may include reprimand; diversity, sensitivity or other appropriate training or counseling; paid or unpaid suspension; termination of employment, or other appropriate action as determined by the Chief.
- H. The Department's compliment-complaint process will be posted to the Department's website. The department will make available the name, address, telephone number and email address where a person may make a compliment or complaint regarding every traffic stop. This information will be included on the violator's copy of departmental citation. Whenever possible, the media will be used to inform the public of the Department's policy and complaint process.
- I. When a motor vehicle contact is made and a citation or written warning is not issued, the MPD Information card which includes the compliment/complaint information will be issued to the driver.
- J. If a person is arrested from a motor vehicle contact, they will be issued a copy of the MPD Information card.
- K. Information for making a compliment or complaint regarding any MPD employee will be posted to the departmental website.

- L. Complaints alleging incidents of bias based profiling will be fully investigated.
- J. Complainants will be notified of the results of the investigations when such investigation is completed.
- K. Compliments or complaints may be made in person, in writing, by telephone, or by electronic mail at the following:
Marshall Police Department
2101 East End Blvd North
Marshall, TX 75672
903-935-4575
compliment-complaint@marshallpd.com
- L. The information listed in item N above will be provided when requested by any Member of the public, and will be provided to persons who temporarily were temporarily detained as a result of a motor vehicle stop.

VI. RECORD KEEPING

- A. The Department will maintain all required records on all traffic stops pursuant to state law.
- B. The information collected above will be reported to the city council annually.
- C. The information will also be reported to TCOLE in the required format.
- D. Information will be collected relating to motor vehicle stops in which a ticket, warning, or citation is issued or an arrest is made as a result of these stops. Including information related to:
 - 1. The race or ethnicity of the person detained
 - 2. Whether a search was conducted, and if so, whether the individual detained consented to the search;
 - 3. Whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
 - 4. Whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code (means physical pain, illness, or any impairment of physical condition), during the stop;

- a. The location of the stop
 - b. The reason for the stop
- E. Patrol supervisors shall review, at least monthly, one randomly selected body camera and one randomly selected in-car video recording for each officer under their supervision. This data will be used to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.
- F. Video reviews will be documented on the MPD Video Review Log and submitted to the Patrol Captain monthly. Logs will be maintained in the files of the MPD administrative division.



For additional questions regarding the information presented in this report, please contact:

Del Carmen Consulting©
817.681.7840
www.texasracialprofiling.com
www.delcarmenconsulting.com

Disclaimer: The author of this report, Alejandro del Carmen/del Carmen Consulting©, is not liable for any omissions or errors committed in the acquisition, analysis, or creation of this report. Further, Dr. del Carmen/del Carmen Consulting© is not responsible for the inappropriate use and distribution of information contained in this report. Further, no liability shall be incurred as a result of any harm that may be caused to individuals and/or organizations as a result of the information contained in this report.

Copyright: This report may not be altered or reproduced outside the agreed terms, in any manner whatsoever without the written permission of the author.