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Courts must stop laws gone wild

By Matt Miller, Special to the *Star-Telegram*

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Imagine taking your computer in for basic repairs and being told that the repair shop you've relied on for years can no longer do the work because the owner doesn't hold a state-issued private investigator's license.

Worse, imagine that if you ask the company to perform the repairs anyway, you and the person who repaired your computer could go to jail for a year and pay \$14,000 in penalties.

Thousands of Texas computer repair shops and their customers now face this scenario in real life due to a recent change in the law. Under legislation brought on behalf of the private investigations industry and passed last year, any computer repair shop that analyzes data on a customer's computer must have a government-issued private investigator's license if the analysis involves data that says something about the actions of a third party.

The law is so broad that it would include looking at who a child has been chatting with on the Internet or whether an employee has been using a computer to gamble while at work. It could also include a computer repair that determined that a spouse unknowingly downloaded a virus onto the computer while visiting a disreputable website.

Computer repair is now a decades-old profession. It is performed by talented, tech-savvy entrepreneurs — without incident — every day in nearly every city in Texas.

These computer repair shops cannot afford to get an investigator's license because the law requires them to either have a criminal justice degree or complete a three-year apprenticeship under a licensed investigator.

The newly formed Institute for Justice Texas Chapter (IJ-TX) challenged the law this week by filing suit against the Texas Private Security Board (the state agency charged with licensing private investigators) on behalf of computer repair companies and their customers.

IJ-TX is a public interest law firm that challenges unconstitutional restrictions on individual liberties in the areas of property rights, free speech, educational choice and — as here — the right to earn an honest living.

The new law was passed without input from the computer repair industry. The only people who testified before the Legislature were representatives from the Private Security Board and private investigations industry lobbyists.

Now, through a series of increasingly broad interpretations, the Private Security Board has specifically put computer repair companies on notice.

The Board has said that computer repair companies should "be aware" that if they conduct an "investigation" (a very broad concept that includes many forms of data analysis) without a private investigator's license, they have committed a crime.

This is typical of how cartels operate.

Under the rubric of concern for so-called public safety, they first push for seemingly modest changes in the law. Then, with the change in place, they push for aggressive and broad interpretations of the law to push competitors out of the marketplace.

By forcing computer repair shops out of the data analysis market, private investigators want to force Texas consumers to use PIs for even basic computer questions such as "how was my computer used and by whom?"

This law was not passed in response to a public epidemic of rogue computer repair shops ripping off their customers. It was passed, quietly and behind the scenes, at the behest of private investigators looking to use government to quash competition.

Texas courts should examine laws like this to determine whether they constitute a legitimate exercise of the government's police power. When, as here, the laws cannot be justified, our courts should strike them down.

In so many industries across our state, government-enforced cartels are limiting competition, driving up prices and reducing to quality of service.

It is time entrepreneurs and consumers questioned this awesome and nearly unbridled power of government to interfere with our daily life, and that is what the Institute for Justice Texas Chapter intends to do.

Group says computer techs shouldn't need investigator licenses

Lawmaker says rule requiring technicians to get P.I. licenses doesn't affect routine repairs.

David Shieh

Austin American-Statesman

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<http://www.statesman.com/news/content/news/stories/local/06/27/0627computertech.html>

Computer technicians performing routine repairs are being required to obtain "unnecessary and irrelevant" private investigator's licenses, a libertarian law group is arguing in district court.

The Institute for Justice — which calls itself a "merry band of litigators" that defends individuals from excessive regulation — sued the state on Thursday on behalf of a group of small business owners. The institute says owners face a \$4,000 fine or a year in jail if they continue to fix computers without private investigator's licenses. Vague language in a bill passed last year by the Legislature is unfairly targeting computer technicians who need to perform data analysis to fix computers, the institute says. But the state agency that administers the licenses and the lawmaker who spearheaded the bill say the institute has misinterpreted the law.

State Rep. Joe Driver, R-Garland, said that routine computer repairs are not affected by the law, which he said was passed to increase protection of consumer privacy.

"They've gotten people who run computer shops out of sorts for no good reason," Driver said. "If computer shops want to repair computers, there's no problem."

The bill specifies that "the review and analysis of, and the investigation" of private computer data requires a private investigator's license, which can be obtained by those who have a criminal justice degree or have spent three years apprenticing with a private investigator.

What that means is at the center of the debate. Although no one has been prosecuted under the law yet, the institute is arguing that the statute's language and the state's explanation of it have indicated that the data analysis involved in routine computer fixes — such as examining a computer's Web cache to determine why it has become virus-ridden — would run afoul of the law.

Mike Rife, a computer technician based in Austin who is the lead plaintiff, said the time and money it would take to obtain a license would significantly hamper his ability to run his business. Because the statute's language might mean that his customers would also be subject to fines for hiring an unlicensed computer technician, Rife said he is worried that he will lose business to companies with private investigator's licenses — typically larger national chains or firms that specialize in computer forensics work.

Matt Miller, executive director of the Institute for Justice's Texas chapter, said that legislators who supported the bill, which passed the House and Senate unanimously, were hoodwinked by private interests.

"We found no evidence that there was a public safety risk," Miller said. "(The Legislature) was responding to private interests that wanted the law passed so they could protect their businesses and drive out competitors."

But Driver said the bill was intended to protect consumers from privacy invasion and that the problems for computer technicians have been exaggerated. Driver said the only cases in which computer technicians would need a license would be when they are asked to investigate and analyze private data — for example, examining a computer to determine whether the user had committed any illegal activities.

Rife, who said he was not aware of the statute before he was approached by the institute, said that none of his competitors had heard of the potential legal problems. Many are still waiting to see how they should respond, Rife said.

"Most of us don't have any intent of getting licensed," Rife said. "But if it puts a big chokehold on our business, we'll have no choice."

Supreme Court upholds gun ownership right

Justices strike down District of Columbia's ban on handguns, say Second Amendment protects personal weapon use.

By Linda Greenhouse

THE NEW YORK TIMES

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<http://www.statesman.com/news/content/news/stories/nation/06/27/0627scotus.html>

WASHINGTON — The U.S. Supreme Court on Thursday found that the Second Amendment protects an individual right to own a gun for personal use, ruling that there is a constitutional right to keep a loaded handgun at home for self-defense.

The landmark ruling, on a 5-4 vote, overturned the District of Columbia's ban on handguns, the strictest gun-control law in the United States.

Legal experts said they expect the decision to usher in a fresh round of litigation over gun rights throughout the country.

The high court rejected the argument that the Second Amendment's "right of the people to keep and bear arms" applied to gun ownership only in connection with service in the "well regulated militia" to which the amendment refers.

The individual right to bear arms identified by the Supreme Court will have little practical impact in most of the country, legal experts said, though Washington's ban on handguns used for self-defense in the home will have to be revised, and similar laws in several cities are also vulnerable.

Most state and city gun restrictions appear to be allowed under the ruling, including licensing laws, limits on the commercial sale of guns, restrictions on guns in places like schools and government buildings and prohibitions on the possession of firearms by felons and the mentally ill. "Dangerous and unusual" weapons can also be banned, although that phrase was not fully defined.

Justice Antonin Scalia, writing for the majority in the 5-4 decision, also suggested that bans on concealed weapons would probably survive.

The legal battlegrounds will be cities with laws similar to Washington's nearly complete ban.

However, gun rights supporters, who praised the ruling, said they would bring legal challenges aimed at local, state and possibly federal restrictions.

The Washington case "is merely the opening salvo in a series of litigations that will ultimately resolve what weapons and persons can be regulated and what restrictions are permissible," said Robert Levy, the lawyer who helped craft the case against the capital's gun ban.

Thirty-one states, led by Texas, had implored the court to overturn the D.C. ban and explicitly declare that the Second Amendment preserves an individual right to own a gun.

In his majority opinion, Scalia wrote that the justices were "aware of the problem of handgun violence in this country" and "take seriously" the arguments in favor of prohibiting handgun ownership.

"But the enshrinement of constitutional rights necessarily takes certain policy choices off the table," he wrote, adding: "It is not the role of this court to pronounce the Second Amendment extinct."

Scalia's opinion was signed by Chief Justice John Roberts and by Justice Anthony Kennedy, Justice Clarence Thomas and Justice Samuel Alito.

In a dissenting opinion, Justice John Paul Stevens took issue with the majority decision that the Second Amendment enshrined the right to own a gun. Stevens contended that it was "today's law-changing decision" that bestowed the right and created "a dramatic upheaval in the law."

Stevens was joined in the dissent by Justice David Souter, Justice Ruth Bader Ginsburg and Justice Stephen Breyer.

On the campaign trail, presumptive Republican presidential nominee Sen. John McCain said he applauded the landmark decision.

The ruling "recognizes that gun ownership is a fundamental right — sacred, just as the right to free speech and assembly," McCain said.

Presumptive Democratic presidential nominee Sen. Barack Obama said he supported the court's finding that the Constitution "protects the right of individuals to bear arms."

But Obama said he also identifies "with the need for crime-ravaged communities to save their children from the violence that plagues our streets through common-sense, effective safety measures."

In a First, High Court Affirms Gun Rights

By **JESS BRAVIN** and **SUSAN DAVIS**

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WASHINGTON -- The Supreme Court ruled that the Constitution guarantees individuals the right to keep handguns in the home, ending a debate about the Second Amendment's 18th-century language while opening new battles over the politically charged issues of guns, crime and violence.

In a 5-4 opinion by Justice Antonin Scalia, the court struck down perhaps the nation's toughest gun law, a 1976 District of Columbia ordinance that effectively bans handguns and required that rifles be disassembled or disabled by trigger locks in the home.

The decision stopped short of invalidating other local, state and federal gun regulations. The court also declined to hand legislators a blueprint for permissible gun regulations, acknowledging that the contours of the Second Amendment right, like other constitutional rights, will have to be mapped in litigation over the years to come.

Gun-rights advocates said their efforts will now swing toward challenging handgun bans in other cities, licensing laws and other statutes, such as zoning laws that ban gun stores. Among the issues that the court left to future

litigation: whether the government can restrict other kinds of firearms besides handguns, specifically assault weapons, which have been the focus of numerous legislative battles at the state and federal level.

Paul Helmke, president of the Brady Campaign to Prevent Handgun Violence, one of the NRA's chief opponents, said there could be a silver lining. Because the decision eliminates the specter of gun confiscation, advocates will be more willing to come to the table and discuss other gun-control issues.

Reflecting the passion and political importance of gun owners in an election that could be decided by independent voters, both presidential candidates immediately embraced the opinion -- while shading their comments to emphasize different portions of the decision that appealed to their varying bases.

Candidates React

"Unlike the elitist view that believes Americans cling to guns out of bitterness, today's ruling recognizes that gun ownership is a fundamental right -- sacred, just as the right to free speech and assembly," said Republican John McCain, seeking to join the gun enthusiasts' celebration while warning that the decision still left open the chance that lawmakers could enact firearms regulations that stopped short of an outright ban. "This ruling does not mark the end of our struggle."

His Democratic opponent, Barack Obama, was more restrained, saying that he "always believed that the Second Amendment protects the right of individuals to bear arms." He emphasized that while the ruling protects a core right and "the D.C. gun ban went too far," the protection "is not absolute and subject to reasonable regulations enacted by local communities to keep their streets safe."

The Bush administration sought simultaneously to endorse the decision while assuring the public that existing federal gun regulations would remain intact.

"As a longstanding advocate of the rights of gun owners in America, I applaud the Supreme Court's historic decision today confirming what has always been clear in the Constitution: the Second Amendment protects an individual right to keep and bear firearms," the president said in a statement. He urged the District of Columbia to "swiftly move" to protect residents' Second Amendment rights.

In its own statement, however, the Justice Department noted that the court said some restrictions on gun possession were permissible. The Justice Department said it "will continue to defend vigorously the constitutionality, under the Second Amendment, of all existing federal firearms laws."

The court's decision appears to strike a balance on gun ownership that reflects the views of the general public. A majority of Americans, 59%, said they oppose laws that ban the sale of handguns, according to an April poll conducted by the Pew Research Center. Yet a similar number, 58%, said it is more important to place controls on gun ownership versus the 37% that said it is more important to protect the right to own a gun.

Despite the opinion's broad language, it was unclear if it would apply beyond the District of Columbia, the federal enclave whose unique status as the seat of government makes it part of no state. Although the district's elected City Council operates autonomously under home-rule legislation approved by Congress, Washington's municipal government is, as a constitutional matter, part of the federal government.

In a footnote, Justice Scalia noted that the issue known as "incorporation" -- whether federal rights also are binding on state governments -- wasn't before the court, and observed that prior cases "reaffirmed that the Second Amendment applies only to the Federal Government." In a 1997 book, he suggested views even more ominous for gun enthusiasts, writing that "properly understood, [the amendment] is no limitation upon arms control by the states."

For Dick Heller, the security officer who challenged the ordinance, the court's 5-4 ruling means district officials must issue him a license to keep a handgun in his Washington home. But it doesn't necessarily allow him to buy another one in the district -- or require the city to allow gun stores to operate within its boundaries. District officials, noting

that the decades-old gun ban was widely popular within their city, pledged to do all they can to limit firearms in their jurisdiction.

Elsewhere, cities with tough gun laws seized on the decision's focus on Washington. Because it only concerns the District of Columbia, the ruling "does not apply to state and local governments," said Benna Solomon, a deputy corporation counsel for Chicago. Chicago has one of the strictest gun regulations. City officials said they are expecting a challenge but would continue to enforce its handgun ban until ordered by a court to cease.

States with assault-weapons bans or licensing requirements for gun owners said that they felt confident their laws wouldn't have to change as a result of the ruling. "The decision affirms the right of states to regulate gun ownership in order to preserve public safety," said David Wald, a spokesman for New Jersey's attorney general.

The village president of Morton Grove, Richard Krier, said that lawyers were reviewing the community's ordinance following the decision and that he had "every intention" of complying with it.

Morton Grove has banned the possession of handguns in the homes of its 22,000 residents since 1981, as well as other dangerous weapons.

Delivered on the last day of the Supreme Court's term, the 5-4 decision underscored the central place the court plays in the nation's politics and culture as well as its law. For the third time this month, a major constitutional issue was decided by a single vote -- that of Justice Anthony Kennedy, the maverick conservative who earlier sided with the court's liberals to extend habeas corpus rights to Guantanamo detainees and bar the execution of child rapists. Today, he lined up on the right to hold that each household in Washington may arm itself with deadly weapons to fend off intruders.

Gun-Right Origins

Justice Scalia's opinion was a 64-page tour from the obscure origins of gun rights in the fratricidal wars of 17th-century England through the violent struggles that defined America in its colonial revolt against the British crown, its division over slavery and the subsequent repression of freed blacks. It continued through to the modern era, where battles against foreign invasion and between internal factions have given way to urban crime.

"By the time of the founding, the right to have arms had become fundamental for English subjects," Justice Scalia wrote, in an opinion joined by Chief Justice John Roberts and Justices Kennedy, Clarence Thomas and Samuel Alito. "The Second Amendment, like the First and Fourth Amendments, codified a pre-existing right."

The Second Amendment, in its entirety, reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

That phrasing has led to countless debates over what precisely is being protected -- a right of states and their citizens to organize militias, obviating the need for a standing army; a right of individuals to arm themselves, in case they may someday need to form a militia; or some other construction involving either or both personal and collective rights.

The Supreme Court last heard a Second Amendment case in 1939, when it upheld a federal ban on interstate transport of short-barreled shotguns. Since sawed-off shotguns had no "reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument," the court found then. Ever since, most courts have seen the amendment as providing for weapons possession in connection with service in a militia, or its modern descendant, the state-run National Guard.

Justice Scalia, however, wrote that his opinion was consistent with the 1939 ruling, which he saw as holding only that not all guns were covered by the Second Amendment. Otherwise, he wrote, why would the court focus on "the character of the weapon rather than simply note that the two crooks were not militiamen?"

Gamut of Restrictions

The court's liberal wing strenuously disagreed, offering its own historical construction that emphasized a gamut of restrictions on firearms over the same swath of time and asserting that the 1939 case, which itself examined precedents on weapons possession dating to colonial times, had settled the matter.

Yet the lead dissent, by Justice John Paul Stevens, did not dispute that the Second Amendment protects an individual right. Rather, he wrote, the question was the "scope of that right," which protected militia service but left additional regulation to the judgment of the legislature. The Second Amendment's drafting history revealed the founders' "concern about the potential threat to state sovereignty that a federal standing army would pose," something that could be checked by state militias, he wrote, joined by Justices David Souter, Ruth Bader Ginsburg and Stephen Breyer.

Texas may feel ripple effect of Supreme Court's handgun ban ruling

Friday, June 27, 2008

By **CHRISTY HOPPE** (Rudolph Bush in Dallas contributed to this report)

The Dallas Morning News

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AUSTIN – In Texas, the state constitution always has provided "every citizen the right to keep and bear arms," but the U.S. Supreme Court's ruling gave hope to those who want greater freedom to carry guns.

Currently, the state allows private businesses to ban weapons on their premises, and guns are prohibited in certain places, such as government buildings and college campuses.

Gun proponents hope to see those with concealed-weapon licenses given the right to carry their guns on campuses and to secured areas at the workplace.

"Actually, both of them have a good chance of passing. They both make sense to me," said Rep. Joe Driver, R-Garland, chairman of the state House Law Enforcement Committee and the House point man on gun legislation.

He noted that some states allow licensed gun owners to take weapons to work, if there is a secure area to keep the them – the owner's glove compartment, for instance, if the parking lot is fenced or monitored, or in an employee's locker room.

Even licensed Texans have to commute to and from work unprotected, Mr. Driver said, adding, "Let's at least let them lock it somewhere."

The massacre at Virginia Tech in April 2007 shows that students need to be able to do more than just throw a book at an attacker or hide under a desk, Mr. Driver said. Concealed-weapon licenses are limited in Texas to those 21 or older, so a campus carry law would apply only to older students and college staff.

Several thousand Texans have signed a petition demanding the right to wear guns openly in public. Open-carry laws have caught on in some places, but Mr. Driver predicted that it's an idea unlikely to gain much traction in the Texas Legislature, which reconvenes in January.

"We'll look at whatever comes before us," he said. "But I kinda like the idea of criminals not knowing who has a gun."

In Dallas, Deputy Mayor Pro Tem Dwaine Caraway, who has pushed for tighter restrictions on gun shows, said Thursday's ruling was unlikely to affect any of his initiatives.

"It's the sale of illegal guns I'm really having a problem with. My concern is the illegal guns in the hands of teenagers," he said.

Gun ruling won't change much, ATF chief says

Meeting with officers focuses on gangs' firearm use

By DANE SCHILLER and ALLAN TURNER

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Houston Chronicle

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Thursday's U.S. Supreme Court ruling upholding the rights of Americans to keep guns in their homes bolstered the resolve of Lone Star State gun proponents who already enjoy the support of Texas lawmakers.

In Houston on Thursday to address 800 law officers attending a state conference on street gangs, the Bush administration's chief firearms-law enforcer said the ruling won't affect how he does his job.

"There is nothing in terms of first blush to say it will significantly change our business," Michael Sullivan, acting director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, said of the high court's decision.

Sullivan stressed that he'd not had a chance to thoroughly review the ruling but that the administration had supported the court relaxing controls on gun ownership.

"Whatever it is, it is a U.S. Supreme Court decision, and we'll have to live by it," said Sullivan, who is also a federal prosecutor.

Easier for criminals?

Among the questions now is whether the ruling will make it easier for criminals to get their hands on guns. One of the standard practices is for people with clean backgrounds to purchase firearms and then sell or give them to those whose background made them ineligible, officials said.

"It's almost a moral issue — a person knowingly selling or giving a gun to a criminal," said Mark Clark, executive director of the Houston Police Officers' Union. "Or someone who just doesn't want to know; a person who figures what he doesn't know about the buyer won't hurt him."

While Sullivan seemed to take the decision in stride, the relationship between guns, gangs and crime continues to grow.

The number of gang-related crimes involving guns has increased 267 percent in the past five years, officers gathered at the Omni Houston Westside Hotel were told.

"They are getting younger, they're getting emboldened and better-armed," Sullivan said as he promised officers the ATF would stand shoulder-to-shoulder with them to confront gangs.

Victor Bond, president of the Texas Gang Investigators Association, said because most gangsters have criminal records stopping them from buying weapons, he didn't see the decision changing their tactics.

"I don't think it will have that much of an impact on us," he said.

Gov. Rick Perry counted the court ruling as a victory.

"Texans have long held that it is a fundamental right of every law-abiding citizen to keep and bear arms," he said. "Affirmation from our country's highest court should unquestionably cement this right for future generations of Texans and Americans."

James Dark, executive director of the Texas State Rifle Association, praised the decision.

"There's been a lot of hooting and hollering and high-fiving around here this morning," Dark said. "We are very pleased with the decision."

The 35,000-member, Addison-based state affiliate of the National Rifle Association joined 39 other state groups in filing briefs to challenge the Washington, D.C., handgun ban, which the court struck down.

No more 'slippery slopes'?

Dark charged that the 32-year handgun ban turned the nation's capital into "one massive, unarmed victims' zone."

Marsha McCartney, Texas spokeswoman for the Brady Campaign, said the decision may clear the way for passage of "reasonable" handgun laws.

"One of the gun lobby's rallying cries was that any gun law would lead us down a slippery slope," she said. "Maybe we can stop talking about slippery slopes and really talk about reasonable gun laws."

McCartney said her group, founded by White House press secretary James Brady after he was critically wounded in the 1981 assassination attempt on President Reagan, advocates requiring background checks for people purchasing firearms at gun shows.

It also favors limiting firearms buyers to one purchase a month.

DPS Turns to Secret Service for Security Advice

Austin Chronicle

By Lee Nichols

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"This is likely not the finest moment for the Department of Public Safety."

That was the conclusion last week of Allan B. Polunsky, the chairman of the **Texas Public Safety Commission**, after hearing testimony detailing how inadequate staffing, inadequate training, and broken or improperly functioning equipment all contributed to the security failure that resulted in the June 8 early-morning firebombing of the **Governor's Mansion**. The commission oversees Department of Public Safety operations.

The testimony came from DPS Sgt. Michael Escalante, a former chief of mansion security during the governorship of George W. Bush, who had been asked to investigate the security situation on behalf of the commission. Escalante's review was damning, and Polunsky said he would ask the U.S. Secret Service to review security measures by DPS at the mansion and other state facilities and landmarks.

Mansion security has been reduced in recent months while renovations have been occurring; Gov. Perry and wife Anita are living in a house in West Austin during the construction. A lone trooper guarded the mansion that night, and Escalante testified that only 13 of the grounds' 21 cameras were operational and that some of the property's infrared motion-detector beams also were either not working properly or guards hadn't been trained to operate them.

Asked by Polunsky if he thought the lone trooper – stationed in the carriage house behind the mansion – should have been adequate protection, Escalante replied: "No, I do not. With the cameras improperly working and the beams inactivated like they were, there should have been additional personnel on the ground. A second set of eyes." A request for four troopers per shift had been made, Escalante said, but that level of staffing apparently never came to fruition.

And what troopers there were didn't get adequate training, Escalante said. Officers were brought in from the Capitol complex and others from the Highway Patrol division. "Some of those received training, some ... did not receive any training. As time moved on and different people came in to the security at the Governor's Mansion, the training as it was passed on, some people that were new that had come in were not familiar with the operations of the camera system, were not familiar with the operations of the perimeter beam. ... They had no consistent plan of action on that transition phase."

Asked by commissioners if there were postings in the carriage house explaining the use of various mechanical aspects of security – cameras, fire alarms, opening and closing the gates – Escalante replied, "There was some training involved that involved sitting a couple of hours with another officer" on how to open and close the gates and how to deal with alarms, but, "there was not any formal training" on camera operation.

"There was not anything in writing when I had requested fire alarm procedures," Escalante added. "During my interview with Lieutenant [David] Armistead [the head of the governor's security detail], he was trying to produce those. He said, 'Yeah, they're here on the board someplace.' He looked for them, [but] they were not to be found at that time. Whether someone put them away, we looked in another book. I later obtained them from his office."

The DPS' security measures need "to be assessed and reassessed," said Polunsky, as he closed the hearing. "To that end, I am requesting that the United States **Secret Service** come in and do an assessment of the Capitol complex, Governor's Mansion, and other public facilities in this city and possibly in others [and] advise the Department of Public Safety as to what optimum security measures should be in place. I ask them to do this because they are, in my opinion, the pre-eminent organization or agency in the world to make this type of assessment. ... It's not a reflection on DPS. I'm confident DPS will work with the U.S. Secret Service in conjunction with this assessment that will be performed expeditiously."

Although Escalante's open testimony came only after a lengthy, closed-door executive session meeting with the committee, Polunsky promised that, "What takes place here in this department needs to be transparent and will be open when appropriate, in public view, of exactly what has taken place, and we will continue to go forward with that philosophy."

Despite the catastrophic gaffe that allowed the still at-large perpetrator to torch the 152-year-old landmark, Polunsky praised the DPS as "still without question one of the finest state law enforcement agencies in this country, if not the finest. But, nevertheless, we had a lapse here in this particular situation. We need to identify what took place, address it, so that it doesn't happen again, and we are committed to do that."

On Tuesday, the DPS received a scathing review from the state **Sunset Advisory Commission** for management problems, but, surprisingly, the topic of the Governor's Mansion never came up.

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New path is vowed for DPS

06/24/2008

By Gary Scharrer

San Antonio Express-News

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<http://www.mysanantonio.com/news/TopStories/stories/MYSA062508.1B.DPS.28bc3e1.html>

AUSTIN — Under accusations that it can't quickly deliver such basic services as renewing drivers' licenses — much less protect the Governor's Mansion from an arsonist — top Texas Department of Public Safety officials pledged Tuesday to modernize the troubled agency.

An extremely critical report by the legislative Sunset Advisory Commission regarding DPS operations already had arrived before the Governor's Mansion was torched while guarded by a single state trooper. Agency officials now concede they didn't have enough officers on duty or properly functioning security equipment there.

Addressing the lawmakers on the panel Tuesday, Public Safety Commission Chairman Allan Polunsky promised to make whatever reforms are necessary to turn DPS into a "top-notch" agency.

"The buck is going to stop with me," he said.

Polunsky, a San Antonio lawyer, said he already has requested a management review of the agency and an assessment of the department's communications system, which has been severely criticized for its inability to allow communications, for example, between DPS troopers and Texas Rangers, another division of the department.

"We need a complete restructuring of this agency. They can't even communicate with each other," said Rep. Lois Kolkhorst, R-Brenham, a member of the sunset panel, which had invited DPS officials to respond to its June 3 report.

"I love my troopers. They are there every day and night. They are putting their lives on the line, but we are not giving them a chance to succeed," Kolkhorst said.

While promising changes, Polunsky balked at suggestions that DPS give up its driver license duties for a new Texas Motor Vehicle Department, as some lawmakers advocate.

Sunset commission member and state Rep. Ruth Jones McClendon, D-San Antonio, said she and her colleagues hear many complaints about long lines at driver license renewal offices. Kolkhorst said she dreads the renewal process herself because it means an hour-and-a-half wait in line.

McClendon and several other lawmakers want the sunset commission staff to propose a separate agency combining the DPS driver license renewal services and vehicle safety inspections that now are under the Texas Department of Transportation.

Putting those duties under a separate agency would free DPS and TxDOT “to do what they do best,” McClendon said.

She expects a new agency that keeps a state trooper's presence at driver license offices under a civilian administration and business model.

Sunset commission staff will have a plan by this fall, which would allow the Legislature to consider creating a separate agency next year.

But Polunsky and DPS Director Col. Tommy Davis consider driver license functions a law enforcement duty, especially with the focus on national security issues.

“We don't have staff people and locations to meet the needs of the public,” Davis conceded.

Davis, a 43-year DPS veteran, told lawmakers the agency performs “better than anytime I have seen it.” He also said agency officials are “not close-minded on change.”

He won't have a choice, Polunsky said later.

“There's no discussion at this point about replacing Col. Davis,” Polunsky said, adding that Davis will be expected to help modernize DPS. “If he is unsuccessful or unwilling to do so, and I'm speaking in the hypothetical, then we'll find someone else.”

Most law enforcement agencies feel more comfortable doing things as they always have, Polunsky said.

“There's a certain culture at the department that's based on history, and we need to be a little more sensitive to contemporary times,” he said.

Polunsky predicted significant changes coming to DPS over the next year — in the structure of the agency and with a modern communications or information technology system.

“If we do not institute the reforms that we need ... to reinvent DPS, then it's going to be my fault as chairman of the Public Safety Commission, and I'll take responsibility for it,” Polunsky said.

Top DPS leadership under fire

Lawmakers grill longtime director over operations gaffes, inefficient management

By Mike Ward

Austin American-Statesman

June 25, 2008

Available Online:

<http://www.statesman.com/search/content/region/legislature/stories/06/25/DPS-Reforms.html>

The Texas Department of Public Safety, already under fire for security lapses before an arsonist torched the historic Governor's Mansion, faced harsh new criticism from lawmakers Tuesday for inefficient management and operational problems that critics say have caused it to fall years behind the times.

Wary members of the Sunset Advisory Commission, which periodically audits all state agencies to measure their effectiveness, advocated stripping the driver's license and vehicle inspection programs from Texas' largest law enforcement agency to improve agency operations.

Others openly criticized top DPS brass for failing to correct a variety of problems that were outlined in a May report — including troubled computer systems, improper management of the vehicle-inspection program and questionable intelligence gathering on terrorism — and recommended a top-to-bottom review of the agency's management structure.

At several points, lawmakers on the powerful committee appeared to suggest that new leadership might be needed — a shift from past years, when DPS brass received a much friendlier reception.

Even so, Col. Thomas Davis Jr., the department's director and a 43-year veteran of the agency, insisted that DPS is "operating better than I've ever seen it."

Committee members appeared shocked at the statement.

"When you say that ... in light of everything that's happened in the last two months, it's hard for me to see that," state Rep. Lois Kolkhorst, R-Brenham, said. "I think the buck stops here in Austin" for the problems.

Rep. Ruth Jones McClendon, D-San Antonio, said "the biggest elephant in the room" was the June 8 mansion fire, which drew nary a question during the two-hour hearing despite a report last week that blamed DPS security lapses. Citing the many management issues raised in the Sunset report, she said, "It seems like we have a disconnect here."

Allan Polunsky, chairman of the Public Safety Commission, which oversees DPS, distanced himself from Davis' assessment.

The agency's computer systems, he said, "are horrendous and inefficient ... inexcusable." Other problems and issues may stem from a hidebound culture that does not embrace change, he said.

"We will reform this agency and make it relevant to the 21st century," he said. "If we don't, you can blame me. The buck stops here."

Polunsky denied that Davis' job might be on the line. But he said, "I expect that Col. Davis will make the necessary changes. ... If he is unsuccessful or unwilling to do so, and I speak hypothetically here, then we will find someone else."

Davis had no response.

"I have no comment whatsoever," he told reporters outside the meeting.

A decade ago, Polunsky was the hard-charging chairman of the state's prison board, which had just become mired in a food-buying scandal, in which a contract for VitaPro was pushed through without competitive bids. The case triggered bribery indictments.

While there, he gained a reputation for occasionally giving prison brass heartburn as he pushed through reforms.

He was named chairman of the Public Safety Commission this spring, just before the problems began coming to light.

During the standing-room-only meeting, McClendon proposed removing the driver's license and vehicle inspection programs from DPS and creating an agency to operate those and the vehicle-registration and license tag programs now run by the Texas Department of Transportation.

Several committee members endorsed that change, but Polunsky and Davis said it would be a mistake.

"This is a law enforcement function," Davis said.

In an unrelated development Tuesday, DPS officials asked Attorney General Greg Abbott to allow them to keep secret the video surveillance tapes of the mansion the day it burned. The reason: protection of public property from terrorism.

Responding to a request from the American-Statesman and other news organizations, DPS assistant general counsel Jeff Lopez said the tapes are exempt from public disclosure because state homeland security laws allow information to be kept confidential if it "relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity."

Although authorities have not classified the fire as terrorism, the mansion's security system protects against potential terrorist acts, Lopez wrote.

Last week, an initial report on DPS security lapses revealed that seven of the mansion's 20 cameras were not working the night of the fire and that an infrared intruder-detection system was not in use because troopers mistakenly thought it was broken. Investigators have said one camera captured a shadowy figure who climbed a fence and started the fire by tossing a burning gasoline-filled container on the mansion's front porch.



Harry Cabluck/ASSOCIATED PRESS

Department of Public Safety Director Thomas Davis Jr., left, and Public Safety Commission Chairman Allan Polunsky, testified before Sunset Advisory Commission members on Tuesday in Austin.

Check of NEISD employees turns up 280 criminal charges

San Antonio Express-News

06/26/2008

By Eva Ruth Moravec

National background searches at San Antonio's second-largest school district have turned up employee criminal records with 276 misdemeanor and four felony charges, ranging from traffic offenses to assault and burglary.

About 6,500 North East Independent School District employees were fingerprinted recently under a new state law aimed at ensuring safety in school districts, and the process revealed 125 charges on auxiliary employees, 138 charges on teachers and 17 on administrators.

Charges included theft by check, driving while intoxicated, driving under the influence, larceny, assault, public intoxication, malicious mischief, burglary and receiving stolen property. Three employees with felony charges "are no longer with the district," said North East spokeswoman Laura Calderon, while the fourth is being investigated.

North East originally asked for an opinion from the state attorney general's office on whether it was required to release information from the background checks, and then on Wednesday released the number of charges found on employees' records and a partial list of what the charges included. The district is awaiting the attorney general's opinion before it releases any more information.

Calderon said she couldn't confirm that the felonies caused employees to be fired but did say that "if the circumstances of a person's arrest record merited a close looking at, we looked at it and took appropriate actions."

District officials talked to each employee with a record, Calderon said, and considered factors such as when the charge was filed and whether the charge resulted in a conviction.

According to North East's policy manual, the district can deny a candidate or fire an employee for reasons including a charge of moral turpitude, defined as "dishonesty, fraud, deceit, theft, misrepresentation, deliberate violence, drug or alcohol related offenses, abuse, and base, vile or depraved acts that are intended to arouse or gratify sexual desire of the actor."

A Department of Public Safety contractor collected the fingerprints, then DPS searched nationwide records. Before the law, only state and local charges were revealed in background searches districts typically conduct before hiring an employee.

Kristin Held, a North East parent, said the district's policies are enough to keep her children safe.

"I have a lot of faith and confidence in the district, and I really trust their judgment on their employees," Held said. "I trust them with my kids."

North East is the fourth district in the San Antonio area to release the results from the background searches, required by a law passed last year. San Antonio ISD found 470 charges on its 4,457 employees; Northside ISD found 402 charges on 7,073 employees; and Schertz-Cibolo-Universal City ISD found 67 charges on 829 employees.

Districts began fingerprinting employees after the law went into effect Jan. 1, and all Texas districts must fingerprint employees by 2011. Meanwhile, districts have released results in a variety of ways — while San Antonio detailed the types of charges found in each employee group, Schertz-Cibolo-Universal City released summarized information. Both Northside and North East have sought an attorney general opinion, as did Austin ISD, the first district required to fingerprint employees.

A first opinion ruled that the Austin district must release the background check results, then a second opinion was issued that said only some information could be distributed. The second attorney general opinion overrode the first, a step supported by the Texas Classroom Teachers Association.

"We want to make sure the information is released lawfully," said attorney Julie Leahy, who represents the TCTA, "but we're also trying to achieve some sort of uniformity. We are concerned that different districts will interpret and distribute information differently."

The attorney general's office could issue a formal opinion that would apply to other relevant requests. Leahy said she doesn't expect one soon, but she does anticipate more requests for an attorney general opinion.

Broken restroom door lock is another jam at the DPS

Pair trapped for an hour at driver's license office

By NEIL STRATTON

Houston Chronicle

June 25, 2008

Available Online: <http://www.chron.com/disp/story.mpl/nb/humble/news/5856840.html>

A day after state lawmakers questioned the level of customer service at Texas Department of Public Safety driver's license offices, a malfunctioning door lock trapped two men inside a bathroom at the Humble DPS for nearly an hour.

At a legislative Sunset Advisory Commission meeting on Tuesday in Austin, DPS officials promised to improve services statewide in the wake of a critical report that has some lawmakers wondering whether to create a new agency to run driver's license offices.

On Wednesday, 41-year-old Christin Perry needed a quick restroom break while renewing his license at the DPS office on Will Clayton. That break turned into a lengthy ordeal when Perry tried to leave.

"What I think is, the lock mechanism broke, because the handle just goes up and down and it doesn't move," he said from his cell phone in the restroom Wednesday afternoon. DPS workers tried to jiggle the door open, but couldn't. They eventually summoned a locksmith, who freed Perry and another man after about an hour.

"It was just a malfunction," Sgt. Delvin Davis said. "It could happen to anyone. They're fine."

Fire's burning question: Does government work well?

Mansion security, other gaffes will leave this year's voters wondering.

COMMENTARY: GARDNER SELBY

Austin American-Statesman

June 26, 2008

Available Online:

<http://www.statesman.com/search/content/region/legislature/stories/06/26/0626selby.html>

November elections are more than four months away.

Yet somehow, a few black-and-white cars parked in downtown Austin led me to a more immediate, potentially nettlesome question for state leaders, most of them Republican.

Does state government consistently work?

I reached the question while wondering why Department of Public Safety troopers still clustered outside the Governor's Mansion more than two weeks after fire left the building a husk. On a recent weekday morning, three patrol cars and an agency pickup sat adjacent to the blackened site.

Maybe it's an unfair query. After all, sometimes only two troopers are visible outside the mansion. Besides, an arson investigation continues. And the magnificent structure obviously needs protection from yahoos.

Could be, too, it's a question that overlooks more significant gaffes of 2008 such as, say, the Texas Department of Transportation mistakenly counting \$1 billion in revenue twice and authorities separating hundreds of West Texas children from their mothers after a raid on their ranch, only to return them under court order — while men suspected of abusing young girls remain free.

The DPS clusters got my attention partly because of what Texans have learned since the June 8 fire. Early that Sunday, one trooper (who had already worked more than 11 hours that day) had watch duty on the building, which was vacated last year to make way for renovations.

Though the trooper could have strolled the grounds, he was seated in a watch post and working on a computer away from security monitors when the fire broke out, and whoever started it escaped.

Luckily, nobody was hurt, and the building's furnishings had been removed for the renovations.

Gov. Rick Perry and the head of the Texas Public Safety Commission say the fire was not the DPS's finest moment.

Fair enough? Maybe. But I wonder if such public sighs leave hanging whether the state's chief law enforcement agency has a grip on its duties.

Regarding a buildup of officers at the mansion after the fire, a DPS spokeswoman said only that troopers are arrayed around Texas based on staffing needs.

Tela Mange said she could not discuss security specifics, including whether posting more troopers at the fire scene cuts into the number of troopers available elsewhere.

Key legislators told me they didn't know why more troopers might be stationed near the mansion than were there before.

Rep. Warren Chisum, R-Pampa, who heads the House Appropriations Committee, said: "I guess they're trying to make up for lost time watching it. They got embarrassed by (the fire); I guess they're trying to make sure it doesn't happen again."

Sen. Steve Ogden, R-Bryan, who chairs the Senate Finance Committee, floated a Navy saying: If you didn't have the time to do it right the first time, how come you've got so much time to fix it now? "The question becomes," Ogden said, "if you didn't have enough guards there to prevent the fire, how come you've got enough guards there to investigate the fire?"

Candidates and voters will use this fall's campaign season to ask many questions of elected leaders and appointees.

Look for the spiciest queries to center on whether government does what it's supposed to do.

Security heavy as grand jury investigates Texas polygamists

By Michelle Roberts

ASSOCIATED PRESS (as reported in the *Austin American-Statesman*)

June 26, 2008

Available Online:

<http://www.statesman.com/search/content/news/stories/local/06/26/0626flds.html>

ELDORADO — Women and girls in prairie dresses entered a courthouse surrounded by dozens of law enforcement officers in the small ranching town of Eldorado on Wednesday as a grand jury opened its investigation into a polygamist sect accused of forcing underage girls into marriage and motherhood.

The main square in Eldorado was cordoned off with yellow police tape. A sheriff's department worker snapped photos of anyone who stood by or attempted to talk to sect members who arrived at the courthouse Wednesday and could be grand jury witnesses.

One witness subpoenaed to testify is a 16-year-old girl who denies that she was married at 15 and had a child soon after. She has asked for a new lawyer, claiming her court-appointed lawyer is lying about her.

Grand jury proceedings are supposed to be secret, but news of the meeting and the girl's subpoena have been disclosed in other court proceedings related to one of the largest custody cases in U.S. history. The girl is a daughter of Warren Jeffs, considered a prophet by members of the Fundamentalist Church of Jesus Christ of Latter Day Saints.

The girl and her mother said in a brief interview with The Associated Press that they were told law enforcement officials would be testifying in the morning. They went back in the afternoon for possible testimony.

"I don't want to do it," said the girl, shuffling her feet under a dark blue pioneer dress.

She said she doesn't know what she'll be asked. Her mother said, "We just kind of wonder what it's all about."

The names of the girl and her mother are being withheld because of the nature of the case.

The girl's attorney, Natalie Malonis, won an extension of a restraining order against FLDS elder Willie Jessop at a hearing Tuesday. Malonis claims Jessop is influencing the girl to be uncooperative, an accusation he denies.

Malonis was subpoenaed to testify before the grand jury, according to a lawyer for the girl's mother, and the lawyer could be seen coming in and out of the courthouse on Wednesday, as could Texas Rangers.

The criminal case follows state child welfare officials' ill-fated April seizure of more than 400 children at the Yearning For Zion Ranch in Eldorado. The children were scattered across foster-care facilities around the state.

The state accused the sect of widespread sexual abuse of teen girls, but the Texas Supreme Court forced the state to return the children from foster care this month. The high court said the state overreached in taking all the children from the ranch when only a handful of girls might have been abused.

Editorial: Homeland Security wins a major fence round before the Supreme Court.

Fort Worth Star-Telegram

June 25, 2008

Available Online: <http://www.star-telegram.com/225/story/721104.html>

The Bush administration scored a big victory this week in its quest to fast track construction of a border fence, but the government is not out of the woods — or courts — yet.

The Supreme Court Monday refused to hear a case against Homeland Security by the Sierra Club and Friends of Wildlife over a two-mile swath of Arizona land that the groups said would be harmed by the fence's construction.

The groups had challenged Homeland Security Secretary Michael Chertoff who used powers under the Real ID Act of 2005 to waive environmental laws so his department could complete 670 miles of fence by the end of the year.

While the high court's decision to not hear the case brought cheers from get-tough border enforcement advocates, an equal number of critics said that the dismissal of environmental laws spells doom for an ecosystem — and property rights — already in danger.

The ruling could have far-reaching effects for other environmental groups, landowners and entities who also have challenged the Homeland Security's decision to condemn land in its effort to stop the flow of illegal immigrants. Coupled with workplace raids and criminal prosecutions of illegal immigrants, the government is showing that it is answering the call for tougher enforcement.

Homeland Security already is facing lawsuits and challenges in parts of the country, but particularly in Texas.

The University of Texas at Brownsville says that its future growth will be impeded because nearly 200 acres of its property will be behind the fence. Hundreds of landowners are fighting Homeland Security's condemnation of their property. The city of El Paso and other environmental groups are challenging the fence in Texas and some of the provisions of the Real ID Act.

All of these legal challenges are in different stages in the federal court system, so it is conceivable that the Supreme Court's ruling will give Homeland Security a mandate to proceed with the fence's construction without the opponents getting their day in court.

That would be a shame because border enforcement is only part of the overall policy that requires federal oversight, but includes local participation and support.

Already, Homeland Security and the Justice Department have shown their intent on criminalizing illegal immigration that includes jail time. In March, more than 50 percent of the federal criminal prosecutions were for illegal immigration cases, up substantially from the same period last year, according to the respected Transactional Records Access Clearinghouse at Syracuse University.

While that effort in the government's Operation Streamline is lauded for its zero tolerance on illegal immigrants, critics say that the strategy is too costly because it overcrowds jails and backlogs the courts. While criminalizing illegal immigration may be a good strategy to thwart crossings, immigrants will continue to find ways to get into the country at all costs, regardless of border fences, if employer sanctions are lax or non-existent.

Immigration is a federal matter and government officials should have the necessary powers to deal with it, but not if it impedes on other equally important environmental and individual property rights laws. That is why Homeland Security should find workable solutions with individuals, groups and entities in its effort.

And that is why Congress should also tackle as quickly as possible legislation similar to a comprehensive immigration reform it attempted in 2007. It needs to deal with strong border enforcement, workable guest worker provisions, employer penalties and a path to legalization and citizenship as the multi-faceted solution for a broken system.

Wednesday, 25 June

Official overseeing Texas DPS promises to modernize agency

By JOHN MORITZ

Fort Worth Star-Telegram

Available Online: <http://www.star-telegram.com/legislature/story/721570.html>

AUSTIN — The head of the commission that oversees the Texas Department of Public Safety promised lawmakers Tuesday that he's taking aggressive steps to modernize the elite law enforcement agency and challenged them to hold him accountable if he fails.

"My opinion is that the buck is going to stop with me," Public Safety Commission Chairman Allan Polunsky told the Texas Sunset Advisory Commission, an arm of the Legislature that periodically evaluates the performances of state agencies.

His remarks came in response to a blistering review of DPS that identified faults with the agency's recruitment efforts and promotion policies and with the way it manages driver's license issuance and motor vehicle inspections. Polunsky did not delve too deeply into specifics but was receptive to recommendations in the Sunset report that DPS adopt customer-friendly business models for the driver's license and vehicle inspection programs.

Outside expert

Polunsky said the DPS is hiring a consultant to recommend policy updates and to examine a top-to-bottom agency overhaul.

He also suggested that the agency's day-to-day top executive, DPS Col. Tommy Davis, would be well advised to embrace rather than resist efforts to streamline the department.

"There's no discussion at this point about replacing Col. Davis," Polunsky told reporters after the hearing. "If he is unsuccessful or unwilling to [implement new programs], and I'm speaking in the hypothetical, then we'll find someone else."

Davis, a longtime DPS administrator who has run the agency for the past eight years, testified alongside Polunsky, assuring the panel that he recognizes the need for modernizing the agency. But he also said the DPS is in better shape than ever. He declined to talk with reporters after testifying.

Lawmakers' concerns

Several commission members raised concerns about a range of DPS problems, from excessively long lines to renew driver's licenses to the growing shortage of state troopers aggravated by competition from local and federal law enforcement agencies.

"We spend a lot of money training those guys," said state Sen. Kim Brimer, R-Fort Worth, referring to the six months recruit troopers spend in the agency's academy. "We're training them for somebody else."

Polunsky said that even though the Legislature boosted troopers' pay in 2005 and in 2007, cities like Fort Worth and Houston pay their police officers more.

State Reps. Linda Harper Brown, R-Irving, and Dan Flynn, R-Van, said they have heard that troopers are dissuaded from arresting people who enter the country illegally or traffic in human smuggling.

"Is it a practice of the department not to enforce these laws?" Harper Brown asked.

Davis replied that immigration is a federal matter and that when troopers encounter illegal immigrants in the course of investigating state crimes or during a traffic stop, they notify federal officials.

No update on mansion fire

The commission's report was drafted before the June 8 arson fire at the Governor's Mansion, and although DPS has been criticized for having only one trooper on duty when the arsonist struck, lawmakers on the panel largely steered clear of the topic. Polunsky did say the investigation is continuing and that he looks forward to making the findings public.

Houston crime lab to resume DNA testing

Associated Press (As Published in the *Houston Chronicle*)

Available Online:

http://www.statesman.com/search/content/gen/ap/TX_Houston_Crime_Lab.html

HOUSTON — The troubled Houston crime lab has hired a new DNA section leader, which means testing can start again six months after it was suspended for the second time since 2002.

The addition of Laura Gahn brings the Houston Police Department in compliance with a state law requiring crime labs to have a supervisor for DNA testing. After Gahn recertifies analysts and equipment, DNA testing can resume, the Houston Chronicle reported in Tuesday's editions.

"Our number one goal is to get the DNA division back up and running as soon as possible," said crime lab director Irma Rios, who wouldn't say when testing will resume.

Houston police shut down the DNA division of their crime lab in January after manager Vanessa Nelson resigned under fire following an investigation that concluded she gave analysts answers to a DNA skills test last year.

It was the second closure since December 2002, when problems with the lab's DNA testing first were revealed. Since then, errors have been discovered in the work of four other crime lab divisions, and three men convicted with faulty evidence have been exonerated.

Tuesday, 24 June

Available Online:

<http://www.statesman.com/search/content/region/legislature/stories/06/24/0624dps.html>

DPS faces new grilling by Sunset Commission

Mansion fire security - and now Perry's criticism - add to tough times at DPS.

By Mike Ward

Austin American-Statesman

June 24, 2008

First came a critical legislative review that described the Department of Public Safety as a hidebound agency resistant to modernization. Then came revelations about sloppy security at the Governor's Mansion the night an arson fire nearly destroyed it.

On Monday, Gov. Rick Perry weighed in and gave the agency no quarter.

It's been a tough few months for DPS officials, who manage Texas' elite law enforcement agency — with little relief in sight.

Today, the embattled agency faces another public grilling at the Capitol over management and operations issues.

At a public hearing, the state Sunset Advisory Commission is to discuss a highly critical May report that recommends changes in how DPS does its business, from a promotion policy that critics claim contributes to a chronic shortage of state troopers to the agency's intelligence gathering on terrorism.

On Monday, Gov. Rick Perry, in his first public comments since the security shortcomings at the mansion were made public last week, joined other critics in questioning why top DPS brass did not have adequate security at the historical manse despite repeated warnings of problems.

"We're disappointed that there was not the response from some of those who realized that there were some lapses there and that the leadership had not accepted those," Perry told reporters Monday, adding that additional funding would not have solved the problem, as some DPS officials have suggested.

Even top DPS officials do not appear to be on the same page about how to clear up some questions raised in the Sunset report, although those could be resolved today in an unusual emergency meeting of the agency's governing board, just before the Sunset Commission begins its public hearing.

"There are a number of issues that are on the table," said Allan Polunsky, a San Antonio attorney who chairs the Texas Public Safety Commission, the department's governing board. "That's one of the reasons that we're having an organizational assessment done on the entire department."

With Perry and legislative leaders queued up to get answers for the growing list of reported problems at DPS, officials there insist many of the issues are beyond their control. And while they are mostly mum publicly, not wanting to irritate the state's leadership at a time when their budget and future could hang in the balance, troopers' advocacy groups say the basic problem is simple.

"They're just stretched too darn thin," said Don Dickson, an Austin lawyer who represents the Texas State Troopers Association, a lobby group. "The agency doesn't have enough people to do the job."

"It's a damned shame the Governor's Mansion had to burn to get this point across."

According to DPS officials, the agency is 248 troopers short of its authorized strength of 3,458.

And with as many as 100 or more troopers expected to retire in August — when they become eligible with 30 years of service — the department could be down as many as 600 in coming years, officials said.

"Blame this on the baby boomers," department spokeswoman Tela Mange said. "As they age out, we expect they will leave. Plus, we're seeing a lot of competition from federal and local law enforcement agencies, the military and private security companies."

While department officials will not discuss specifics of the trooper shortage and how it affects law enforcement, they insist the agency is maximizing its stretched resources.

"We do the absolute best we can with the resources we have and the responsibilities we have," Mange said.

Other states are facing much the same problem, she and officials in other states said.

Amid that shortage, officials reassigned 20 troopers to the Capitol complex to beef up security in the aftermath of the mansion fire. And dozens more have been redeployed to counties along the Mexican border at Perry's urging to crack down on immigrant smuggling and a crime spree related to Mexico's warring drug cartels.

"We have whole counties without coverage," Dickson said.

Mange and other DPS officials said they do not discuss security specifics and cannot respond to Dickson's assertion.

In preliminary findings, the agency acknowledged that too few troopers had been assigned to guard the mansion, that the officers stationed there had been poorly trained in operating the security cameras and infrared intruder sensors, and that the flaws had gone uncorrected for months.

At its meeting last week, the Public Safety Commission gave hints that there is disagreement on what should be done.

Commissioner Tom Clowe said he does not necessarily favor a Sunset recommendation to apply a "civilian business management model" to the driver's license bureau, a move that could add civilian staffers to replace troopers so that the troopers could be assigned to law enforcement duties.

In addition, there appeared to be differing opinions on another Sunset recommendation to modify the department's longstanding promotion policy to allow troopers to ask for assignment to specific cities and towns. Under current policy, the agency can require them to move for a promotion.

Other findings in the Sunset report: The agency poorly manages the vehicle inspection program, and it should be turned over to civilian operation; the agency's current program for handling suspended driver's licenses "wastes government resources"; and the agency should review its entire management and organizational structure — unchanged for years — amid concerns that it may be outdated and cumbersome.

Polunsky said he supports anything that will make the agency more effective and efficient without compromising public safety. Dickson said he, too, supports reforms to a bureaucracy that he insists has long been known for its "bullheaded, ham-fisted personnel policies."

"It's going to take both the Legislature and the department to fix this," he said.

HPD crime lab soon to resume DNA testing

New hire means department is now in compliance with state law

By ROMA KHANNA

June 23, 2008

Houston Chronicle

Available Online:

<http://www.chron.com/disp/story.mpl/front/5852775.html>

The Houston Police Department crime lab is close to resuming DNA testing, officials told a City Council committee Monday, six months after the lab was forced to suspend such analyses for the second time in recent years.

Crime lab director Irma Rios introduced new DNA section leader Laura Gahn, whose hiring brings HPD in compliance with a state law requiring crime labs to have a supervisor oversee DNA testing. Gahn, who has more than a decade of leadership experience in private DNA labs, joined HPD earlier this month. After she recertifies analysts and equipment, DNA testing can begin, Rios said.

"Our number one goal is to get the DNA division back up and running as soon as possible," Rios told the council's Public Safety and Homeland Security Committee. She declined to give a specific date when testing will begin.

HPD shuttered the DNA division of its crime lab in January — the second such closure since December 2002 — after manager Vanessa Nelson resigned. HPD officials were poised to fire Nelson after internal investigators concluded she gave analysts answers they needed to pass a DNA skills test in 2007.

The skills test controversy is just one in a series that has plagued the HPD crime lab since 2002, when problems with its DNA testing first were revealed.

Since then, errors have been discovered in the work of four other crime lab divisions and three men, convicted with faulty evidence, have been exonerated.

Before joining HPD, Gahn worked for Houston-based Identigene. She received a Ph.D. in biochemistry and molecular biology from Louisiana State University Medical Center.

While with Identigene, Gahn reviewed HPD analysts' work in several controversial cases, including the one against Josiah Sutton, who was convicted largely on faulty evidence from the city crime lab and served more than four years for a rape he did not commit before DNA tests cleared him.

In 2003 and 2004 Gahn testified at administrative hearings against analysts that HPD attempted to fire for their work in the Sutton case.

Group sues to keep teacher background checks private

Associated Press (As Reported in the *Houston Chronicle*)

June 23, 2008

Available Online: <http://www.chron.com/dispatch/story.mpl/headline/metro/5852774.html>

AUSTIN — A teacher's group filed a lawsuit Monday in an effort to prevent the release to the media of personal information gleaned from teacher background checks.

The Association of Texas Professional Educators filed the lawsuit against the Austin school board and Texas Attorney General Greg Abbott.

When the Austin American-Statesman requested the information, the school district tried to withhold it, citing exemptions in the Texas public information laws. But Abbott's office ruled that part of the information was not exempt from the public information laws.

"While we had certainly hoped that the district and the attorney general's office would have respected the privacy of individual citizens, we're now forced to file suit to protect the fundamental rights of AISD employees," said Doug Rogers, the group's executive director.

The Austin school district did not immediately return calls seeking comment.

Austin was the first district to enforce a new law requiring all certified teachers and substitutes to be fingerprinted by Sept. 1, 2011. Other employees, such as janitors, will be required to complete the process when they're hired.

Perry 'disappointed' in DPS lapse before mansion fire

Associated Press (As Reported in the *Houston Chronicle*)

June 23, 2008

Available Online: <http://www.chron.com/disp/story.mpl/front/5852329.html>

AUSTIN — Gov. Rick Perry said Monday that he's disappointed in the "lapses" at the Department of Public Safety that allowed an arsonist to torch the historic Governor's Mansion earlier this month.

It was Perry's first public response to an ongoing DPS investigation that has so far found that security was inadequate the night of the fire.

"Obviously, we're disappointed that there was not the response from some of those who realized that there were some lapses there, and that the leadership had not accepted those," he said, apparently referring to unheeded requests that additional guards be placed on duty at the mansion.

Part of the investigation made public last week found that a single state trooper guarding the Governor's Mansion was inadequately trained and ill-equipped to guard the grounds

Additionally, only 13 of the 20 security cameras on the mansion grounds were operating and the trooper was on his second shift of the day when the fire was first reported just after 1:30 a.m., according to the DPS report.

A spokeswoman for the DPS had no comment.

Perry said he did not believe the problems were a result of insufficient funds.

The state fire marshal, who is investigating the fire, has said video footage shows a suspect in the early morning hours of June 8, standing in front of the Governor's Mansion, igniting an object and throwing it onto the porch of the historic landmark, creating a fireball and blaze that ravaged the 152-year old structure.

The trooper on guard at the time was turned away from the security console in the carriage house behind the mansion and was working on a computer on the other side of the room. DPS Sgt. Michael Escalante said troopers guarding the mansion are allowed a certain amount of personal time to watch television or use the computer.

"As the chairman said it was not the DPS' finest day," Perry said.

Texas group wants to carry handguns in plain view

Associated Press (As Reported in the *Houston Chronicle*)

June 23, 2008

Available Online: <http://www.chron.com/disp/story.mpl/chronicle/5851852.html#Intro>

FORT WORTH — Despite the Lone Star State's love affair with the gun, there's at least one firearms restriction that some Texans want lifted.

Texas is just one of six states in which handguns can't be worn in plain view. The other 44 states, in the parlance of gun advocates, are known as "open-carry" states.

More than 3,500 people have signed an online petition asking Gov. Rick Perry and the Legislature to permit Texans to wear their handguns without concealing them.

The Texas Citizens Defense League supports the petition, which requests that people who legally buy handguns be allowed to carry them openly, except in places prohibited by law.

"Cowboys and Indians, and the Alamo — and many just assumed that Texas was an open-carry state," wrote Gary Williams, who signed the petition. "Clearly, there are some changes that need to be made."

John Pierce, co-founder of Open Carry, a Web site promoting open-carry laws, said he considers the ability to wear a holstered firearm on the outside of one's clothes to be "a basic gun right." He also said it's part of Texas' long tradition of gun ownership, dating to when frontier settlers wore their guns for everyone to see.

"It was considered part of everyday life back then," Pierce said in a story today in the Fort Worth Star-Telegram. "The concealed-carry part was what was looked at with disdain."

Some law enforcement officials and gun-safety advocates oppose the petition. Tarrant County Constable Sergio DeLeon said the sight of citizens openly carrying firearms would "create more problems than it would solve."

"I really think it would cause a lot of uneasiness in the community, with people seeing so many guns," DeLeon told the newspaper.

Richard Leal, a board member of Houston-based Texans for Gun Safety, said state laws are already friendly enough to gun owners.

"What are they trying to do?" Leal said. "Go back to Texas gunslinger days?"

The Texas governor has not taken a public position on open-carry laws.

"The governor is very supportive of conceal and carry laws," Perry spokeswoman Kristi Piferrer said. "Expanding that to open carry probably will take a lot of public deliberation and legislative guidance."

Smuggling: Crackdown on truckers necessary

El Paso Times Staff

06/21/2008

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http://www.elpasotimes.com/ci_9658465?IADID=Search-www.elpasotimes.com-www.elpasotimes.com

Texas Gov. Rick Perry on Thursday announced a crackdown on truckers convicted of smuggling people or drugs into Texas.

Specifically, convicted truckers would forfeit their commercial driver's licenses, effectively preventing them from being on the road.

Good. We hope that's just a start.

Perry's action is the result of a new tactic being used by Mexican drug traffickers, who coerce truckers into hauling people and narcotics across the border. The governor said, "Mexican crime syndicates have changed their tactics. They're losing money. They're looking for new loopholes to exploit..."

Those loopholes, of course, are truckers.

Perhaps it would be prudent to consider complementary actions, such as heavy fines, significant prison sentences and the confiscation of vehicles used in smuggling. The knowledge that smuggling will carry serious consequences could make many people think twice before cooperating with the cartels.

That apparently hasn't been the case. Yes, there are laws on the books that provide for the revoking of licenses of truck drivers who are convicted of felony smuggling. But a state official with the Department of Public Safety said federal courts that made the smuggling convictions didn't always bother to mention their actions to state officials.

There's no telling how many convicted smugglers escaped having their licenses lifted because of that lack of communication.

How serious is the problem? Perry said that already this year

Border Patrol agents have caught 423 tractor-trailers carrying more than 1,800 undocumented immigrants and more than 112,000 pounds of drugs. And that's with the year not yet half over.

The smuggling of humans is especially heinous because of the danger it presents to those being smuggled. There have been too many instances in which people have been hurt or died in the process of smuggling.

Carlos Carrillo, chief of the Laredo Sector of the U.S. Border Patrol, said, "Alien- and drug-smuggling organizations are aggressively recruiting truck drivers using the promise of easy money, sex and drugs."

Not everyone will be able to withstand those temptations, and that's one reason that severe consequences must be available for punishing smugglers.

If new strictures concerning smuggling of people and drugs by truckers work, it will be an important strike against the smugglers in Mexico. As avenues of smuggling continue to be choked off, fewer options are available to smugglers. Strict enforcement of laws against smuggling by truckers will provide an important weapon against the Mexican cartels.

Editorial: Security lapses may have aided mansion arsonist

Beaumont Enterprise

6/23/08

Available Online:

http://www.zwire.com/site/index.cfm?newsid=19791963&BRD=2287&PAG=461&dept_id=512588&rfi=8

Some Texans are saying the Department of Public Safety should have had more than one state trooper on guard duty the night the governor's mansion in Austin was torched by an arsonist. We disagree. Large numbers of highly trained state troopers should be patrolling Texas highways, not watching over a building being refurbished.

Yet this crime might have been avoided if the single trooper on duty had been assisted by other security guards. More importantly, the security devices already in place should have been operating properly.

Sadly, they weren't. Parts of a motion detector system were not working right and required extra vigilance. Seven of 20 surveillance cameras were not operating at the time of the crime.

The result is millions of dollars in damage to one of the state's most revered historical structures. The arsonist was apparently able to enter the grounds easily and leave little more than a grainy image on one camera.

The DPS will conduct an internal investigation of the crime. That's welcome, but more planning on the front end might have prevented this whole mess. Taxpayers deserved better.

Shapleigh border drug-war can be called 'Untouchable'

El Paso Times Staff

06/22/2008

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It's Eliot "Ness" Shapleigh now.

Our favorite state senator has another idea. He's a man of many, you know. No dust settles on our guy, although dust has settled on some of his ideas over the years.

Normally Shapleigh involves himself in education, roads, health care, developing border economics and "We need a state income tax."

He's written or helped sponsor more than 400 bills since 1997.

This particular idea is among his best. He wants to fight drug cartels on the border the same way the New York Mafia was fought in the 1980s: Infiltrate them, rat them out and then rot them out from the inside. He expounded on this in a "Rio Grande Guardian" article recently.

Waiting for the Mexican government to fight the cartels over there ... well, Mexican President Felipe Calderon having sent 2,000 army troops to patrol Juárez hasn't done much good. When the army guys aren't tripping over their own feet, they're tripping over dead cartel guys.

So we do it on the border like we brought down so many Gambinos, Bonannos, Colombos, Genoveses and Luccheses in New York ... there was hardly anyone left to say, "fagetaboutit."

The theory is you get these guys in court, not up against a wall on St. Valentine's Day.

You can hardly shoot them these days, anyway, especially if you're a Border Patrol agent named Ramos or Compean.

Shapleigh probably already knows this, but the New York plan is kind of what the FBI announced it's already doing in El Paso. The G-men are going after

the Aztecas, the U.S.-side gang that handles business for the drug-cartels in Juárez. (So don't go messing with guys in suits sitting in vans. You might screw up a wiretap.)

Shapleigh's idea is to not only employ the feds to fight drug guys, but add in state and local authorities. That's what they did in New York. Everybody was in the posse.

Governor Rick Perry is all for using Texas resources, and he'll be asking the state legislature for some money.

But using local law enforcement?

The Sheriff's Office has to be a tad touchy. Their guys, Ramos and Compean, are in prison for having shot and wounded a drug guy. And whenever deputies stop somebody, they are accused of profiling.

"Excuse me, sir, but you have five Azteca tattoos on your face and arms ... but I want to say right up front that I didn't stop you for that. I just wanted you to know you can cross into El Paso much easier on one of the bridges. You don't need to plow your SUV through the river mud, OK? This time you can come on through. I don't want you to think I'm profiling you cuz of the tattoos ... or because of the automatic rifle in the backseat."

So Shapleigh might run into some opposition from the "local" sector. And Perry's plan does not call for the state to supply the men, just some money.

And remember, too, while recently deceased Sheriff Leo Samaniego was one tough guy on border security, the El Paso Police Department hasn't been keen on tackling border issues, which it contends is a federal issue.

You don't want a city cop going undercover, and then some drug guy remembering, "Hey, aren't you same guy who got me on "Click-It-Or-Ticket?"

But good for Shapleigh. Root out the drug leaders. Rot them out from the inside.

Robert Stack, Kevin Costner, and now the latest leader of "The Untouchables," Eliot "Ness" Shapleigh.

Smuggling will cost truckers' licenses

El Paso Times

Brandi Grissom

06/20/2008

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AUSTIN -- Truck drivers convicted of smuggling drugs or people into Texas will lose their commercial driver's licenses in a new border security initiative Gov. Rick Perry announced Thursday.

"Mexican crime syndicates have changed their tactics," Perry said. "They're losing money. They're looking for new loopholes to exploit, and their latest target are truckers."

Standing with U.S. Border Patrol sector chiefs from Texas, Perry said cartels have started coercing commercial truck drivers into hauling narcotics and humans across the border. Starting now, he said, Texas would aggressively pursue drivers who fall prey to that temptation and permanently revoke their commercial driver's licenses.

"We're sending a message to commercial drivers who are breaking the law," Perry said. "You're going to lose your license; you're going to lose your livelihood."

Already this year, Perry said, Border Patrol agents have caught 423 tractor-trailers with more than 1,800 undocumented immigrants and more than 112,000 pounds of drugs.

"Alien- and drug-smuggling organizations are aggressively recruiting truck drivers using the promise of easy money, sex and drugs," said Carlos Carrillo, chief of the Border Patrol's Laredo Sector.

The Texas Department of Public Safety has already yanked the licenses of five drivers, including one who was caught in the El Paso Sector while trying to smuggle undocumented immigrants.

Mike Przybyl, assistant chief of the Border Patrol's El Paso Sector, said the driver was caught at a New Mexico checkpoint.

Since September 2007, agents in the El Paso Sector, which includes all of New Mexico and the two westernmost Texas border counties, have seen seven cases of commercial truck drivers smuggling drugs and people, Przybyl said.

Agents intercepted five trucks loaded with more than 2,400 pounds of marijuana, and two other trucks that carried 12 undocumented immigrants, he said.

"We have to let commercial truckers know that this is out there and not to risk their livelihoods by succumbing to the pressures, the temptations," Przybyl said.

Existing state and federal laws already provide for the revocation of licenses for drivers convicted of felony smuggling.

But Judy Brown, chief of the Department of Public Safety's driver's license division, said that in the past, the federal courts that made smuggling convictions did not always convey that information to state officials.

Drivers would pay a fine or serve a short sentence and then return to the road.

"Through the cooperative effort between Border Patrol and DPS, we're able to get those convictions reported and then take action on those drivers," Brown said.

Perry: Truckers convicted of smuggling will have commercial driver's license revoked

EDINBURG, June 19 - Gov. Rick Perry announced Thursday that the Department of Public Safety, working with U.S. Border Patrol, is to crack down on commercial truckers who knowingly smuggle illegal weapons, drugs or humans across the Texas-Mexico border.

Under what is being called the "Texas Hold 'Em" initiative, a commercial driver's license will be revoked if a truck driver is convicted of felony smuggling. The initiative will also include increasing the awareness of smuggling penalties, initiating a public service announcement campaign, creating a "Tipster" Hotline, and offering rewards for information leading to felony smuggling convictions.

The idea was first proposed by Border Patrol's Laredo sector. Border Patrol may post billboards along the border warning truckers of the consequences of drug and human smuggling. Daniel Doty, spokesman for the Border Patrol in the Rio Grande Valley said his department would likely hand out literature in truck stops and at trucking schools to explain the initiative. The *Guardian* will have reaction from Border Patrol Valley Sector Chief Ron Vitiello later today.

At a news conference in Austin, Perry said Texas Hold 'Em is a permanent program that will serve as a standard operating procedure across all five Border Patrol sectors within the state. Border Patrol is also actively pursuing similar agreements with other states to expand the program nationwide.

"The vast majority of Texas truckers are law-abiding citizens who work incredibly long hours to feed their families and keep our economy moving," Perry said. "But there are those who are breaking the law to make a quick buck. And to those law breakers, we are sending the message: If you knowingly smuggle goods across the Texas border, you will lose your license and your livelihood."

Perry said DPS would work with Border Patrol on the initiative. He said Border Patrol recognized the need to establish a process that ensures DPS receives the necessary court documents to suspend violators' driver licenses upon a felony smuggling conviction.

In the first eight months of fiscal year 2008, Border Patrol agents in Texas intercepted 423 tractor trailers resulting in the detainment of more than 1,800 undocumented immigrants and more than 112,000 pounds of illegal drugs. In the Laredo area, 330 truck drivers have been caught smuggling drugs or humans into Texas in the last 18 months.

"This joint initiative is another step in securing our border against all-threats," said Border Patrol Chief David V. Aguilar. "Together with our shared-mission partners, we will continue to take away the means by which smugglers try to put the American way of life at risk."

“DPS, in cooperation with the U.S. Border Patrol, is pleased to have established this process for reporting felony convictions for commercial drivers who have committed felonies by transporting drugs and/or undocumented aliens in a commercial vehicle,” said Chief of DPS Driver License Division Judy Brown.

“Taking action to revoke the privilege of these drivers will further assist our efforts to increase safety on the public roadways and to increase the security of our nation’s border.”

Texas Motor Transportation Association President and CEO John D. Esparza applauded Perry for the initiative. He said he was confident it will make Texas' border more secure.

"This initiative is a key component to enforcing the existing law we have today which revokes commercial drivers licenses of those convicted of felony smuggling," Esparza said.

"Texas Hold 'Em will continue to protect the law-abiding Texans who make a living by driving commercial trucks and it will discourage or remove those who try to circumvent the rules of the road. It is our hope that this initiative will curtail and prevent illicit trafficking industries; a person who knowingly transports drugs and/or undocumented aliens in a commercial vehicle should no longer be able to make their livelihood on Texas roads."

Perry: Truckers convicted of smuggling will have commercial driver's license revoked

Rio Grande Guardian

6/24/2008

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Helmet law overturned twice before

By Chris Paschenko

Galveston County Daily News

June 22, 2008

Available Online: <http://galvestondailynews.com/story.lasso?ewcd=28e153d1d07bfc77>

In Texas, anyone age 21 or older can petition the Department of Public Safety to ride a motorcycle without a helmet.

The freedom to feel the cool wind in your hair comes with a motorcycle safety course, proof of \$10,000 in medical insurance, proof of ownership and a \$5 sticker.

John Young, a motorcycle safety instructor with the Department of Public Safety, said with record gasoline prices more people than ever are seeking the right to legally travel on two wheels.

"For 13 years in a row, we've had record numbers of training motorcycle riders," Young said.

"Last year, we did almost 34,000 students. This year, we're expected to do somewhere around 40,000."

But the sticker, which is valid for three years, doesn't guarantee a law enforcement officer won't pull motorcyclists over for not wearing a helmet.

Young said the state doesn't require anyone to actually affix the sticker to a motorcycle.

"We get a lot of calls that people are stopped anyway," Young said.

The sticker is so small that officers can't tell if it's valid without stopping someone, Young said.

"Me, personally, I wouldn't get one," Young said.

"What does it prevent? I wear a helmet anyway, so it wouldn't apply to me."

According to the National Highway Traffic Safety Administration, Texas' mandatory helmet requirement for all riders became law in 1967.

And like many other states, it was repealed in 1977 but still was required for riders younger than 18.

In 1989, legislators reversed the law, making it once again illegal to ride without a helmet.

The change lasted until 1997, when former state Sen. Jerry Patterson, who is now commissioner of the Texas General Land Office, authored the current bill.

Sen. John Carona, R-Dallas, is chairman of the Texas Transportation and Homeland Security Committee.

He said he will continue to try to overturn or change the law to help protect taxpayers from funding medical treatment and long-term care for riders who are underinsured.

Senator targets motorcycle helmet exemption

By Chris Paschenko

Galveston County Daily News

June 22, 2008

Available Online: <http://galvestondailynews.com/story.lasso?ewcd=2abc4b39f33dc5f4>

TEXAS CITY — With a record number of Texans becoming licensed and trained to drive motorcycles, the chairman of the state's Transportation and Homeland Security Committee wants to eliminate the state's helmet law exemption.

State Sen. John Carona, R-Dallas, said he believes restoring mandatory helmet requirements for all would reduce the number of riders injured or killed in accidents.

And with Texas gasoline prices averaging \$3.93 per gallon Friday, moped and motorcycle dealers are reporting record sales figures, as commuters look to lower transportation costs.

Proof Of Coverage

Texas is among 27 states that exempt motorcyclists from mandatory helmet usage. Most states' laws exempt riders who've reached a certain age or those who have medical insurance policies to cover injuries.

In Texas, motorcyclists age 21 or older can obtain an exemption from the Department of Public Safety by taking a motorcycle safety course and offering proof of a minimum \$10,000 medical benefit policy.

Carona said his 2007 bill, which attempted to increase the medical insurance coverage requirement to \$150,000, was soundly defeated.

He said \$10,000 in medical coverage is "woefully inadequate."

"The \$10,000 statute requirement doesn't begin to cover costs of treating head injuries," Carona said.

"While I respect the freedoms that are desired by today's motorcyclists, I also believe we in government have a duty to protect the taxpayer. When so many of these accidents end up a burden to the taxpayer, then it's time to change the law."

More Fatalities

Texas General Land Office Commissioner Jerry Patterson, a former state senator, authored the 1997 bill that overturned Texas' mandatory helmet requirement.

According to the National Highway Traffic Safety Administration, motorcycle rider fatalities increased 31 percent after the 1997 exemption passed compared with 1996 statistics.

Patterson's district included Galveston County, where, earlier this month, two prominent community leaders — a beloved school board member from Santa Fe and the other a veteran, off-duty Galveston police officer — died in motorcycle wrecks.

Both leaders died of blunt-force trauma. Neither wore a helmet.

Although Patterson said he wouldn't ride a motorcycle without a helmet, he objects to a mandatory helmet law on several grounds.

He said he knows helmets reduce the risk of head injuries, but statistics fail to prove helmets reduce injuries and deaths.

"Those opposed to the law argue fatalities and cite fatality data," Patterson said. "They'll also argue almost in the same breath the public burden argument, that the uninsured have no means of caring for themselves after becoming permanently or totally disabled."

The possibility the state would have to care for the uninsured and disabled is the only valid argument, Patterson said.

"If you have more fatalities, it's less of a public burden," Patterson said. "Dead people don't need long-term care. If you're interested in safety, you shouldn't be riding a motorcycle, period."

More Riders

John Young, motorcycle safety coordinator of the state Department of Public Safety, said fuel costs are helping spur record numbers of people seeking to obtain motorcycle licenses and training.

"It's an easy way to get something you've always wanted," Young said. "I hear that a lot."

Carona said today's drivers are more distracted than ever, with cell phones and other devices that divert attention away from the road.

Carona said he'll reintroduce a bill that he hopes will abolish Texas' helmet exemption or increase tenfold the medical insurance requirement.

Carona said Patterson lobbied against the 2007 bill, but Patterson called the \$10,000 medical benefit that was part of the 1997 bill a "sham requirement."

"It was put in the bill to get a vote," Patterson said.

Patterson said he would support a higher insurance requirement on all drivers.

As for making helmets mandatory for all, Patterson said, "If I'm engaging in risky behavior that doesn't cost the public money, that should be my business ... If we're against motorcycle deaths, then we should outlaw motorcycles."

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By the numbers

The number of Texas motorcycle licenses issued has increased throughout the years:

2008 — 853,000

2007 — 838,000

2006 — 803,000

2005 — 781,000

Source: John Young, motorcycle safety coordinator with the state Department of Public Safety
