

EXECUTIVE SUMMARY OF SUNSET STAFF REPORT

Texas Commission on Law Enforcement

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This limited scope review of the Texas Commission on Law Enforcement (TCOLE) follows up on the full Sunset review of the agency conducted in 2020-21. At that time, the Sunset Commission found TCOLE had relatively limited authority to set or enforce anything but minimum licensure standards and had no meaningful role in setting or enforcing standards of conduct for law enforcement personnel or holding them accountable. As a result, the Sunset Commission recommended continuing TCOLE for two years while establishing a blue ribbon panel to comprehensively review and recommend needed changes to improve law enforcement regulation in Texas. The Sunset Commission also adopted several management recommendations to improve the agency's efficiency and effectiveness including requiring TCOLE to improve its contracting practices, particularly for information technology, and updating its statutes and procedures to include best practices for licensing and regulatory agencies. The statutory recommendations were drafted into a bill, House Bill 1550, but the bill failed to pass during the regular session. The Legislature instead passed Senate Bill 713 that continued TCOLE for an additional two years and directed Sunset Commission staff to conduct a limited scope review of TCOLE in the 2022-23 biennium.

Texas' approach to law enforcement regulation continues to lag behind the needs of the state.

Sunset staff once again found Texas' approach to law enforcement regulation continues to lag behind the needs of the state. Texas has relied on a bifurcated regulatory model since it began licensing peace officers in 1970. At the state level, TCOLE sets minimum licensing and training standards for law enforcement personnel and enforces compliance. Meanwhile, local law enforcement agencies set their own standards of professional conduct, disciplinary policies, and additional training requirements for their employees. However, over the past 50 years, the world in which law enforcement operates has changed significantly. Law enforcement has become a much more complex and demanding field, with significantly increased pressure for professionalism and outside scrutiny of conduct. For example, as the recent tragedy in Uvalde demonstrated, the ability to command and coordinate a large-scale incident response within and between agencies is crucial for effective law enforcement. Law enforcement must be prepared to respond quickly and effectively even in catastrophic situations. At the same time, technology has increased the public's awareness of law enforcement activities. The outdated bifurcated regulatory model from 1970 has not kept pace with these changes and can no longer ensure the training,

professionalism, transparency, and accountability the public now expects of law enforcement. While Texas has a continuing need to regulate law enforcement, the Sunset review of TCOLE found the state's current regulation is, by and large, toothless. Texas' regulatory approach has resulted in a fragmented, outdated system with inadequate training, lack of statewide standards, and inconsistent accountability.

Rather than attempting a piecemeal approach to improving the efficiency and effectiveness of TCOLE when the state's regulatory system is fundamentally broken, Sunset staff again recommends establishing a blue ribbon panel to comprehensively look at how the state regulates law enforcement and recommend needed changes to improve law enforcement regulation in Texas, including TCOLE's effectiveness as a regulator. Other recommendations focus on changes TCOLE could currently implement to improve its efficiency and effectiveness, regardless of future policy decisions. These recommendations include best practices for licensing and regulatory agencies and updating TCOLE's statute to reflect state standards.

The following material summarizes the recommendation in this report to continue the agency. For additional information on the previous Sunset review of the agency, please see the *Staff Report with Final Results*, published in June 2021 and available on the Sunset Commission's website. The 2021 report contains detailed information on the original Sunset staff recommendations, Sunset Commission decisions, and legislative action on the agency taken during the 87th Legislature.

Issues and Recommendations

ISSUE 1

Texas's Approach to Regulating Law Enforcement Is Ineffective.

While Texas has a continuing need to regulate law enforcement, the Sunset review of TCOLE found Texas's approach has resulted in a fragmented, outdated system with inadequate training, lack of professional standards of conduct, and inconsistent accountability. The state's regulatory model, bifurcated between the state and local governments, creates significant gaps that undermine the purpose of statewide licensure, and does not best ensure public safety and law enforcement professionalism in an accountable and transparent system. Texas also lacks statewide standards of professional conduct for law enforcement personnel, relying instead on inconsistently set and enforced local standards. In addition, TCOLE's minimum training standards do not meet the evolving needs of law enforcement personnel in Texas. Rather than attempting to repair a fundamentally broken system, a comprehensive look at how the state regulates law enforcement is necessary to make needed changes to best protect the health, safety, and welfare of the public, as well as law enforcement personnel. A blue ribbon panel could provide expertise and recommendations on increasing the effectiveness of law enforcement regulation in Texas.

Key Recommendations

- Establish a blue ribbon panel to comprehensively evaluate the regulation of law enforcement in Texas and make recommendations for needed changes.
- Continue the Texas Commission on Law Enforcement for two years, until 2025.

ISSUE 2

Key Elements of TCOLE's Statute and Procedures Do Not Conform to Common Licensing and Regulatory Standards.

Several of TCOLE's statutes and procedures do not match best practices for licensing and regulatory agencies. TCOLE lacks standard statutory direction, such as to protect the confidentiality of people who file jurisdictional complaints, and the authority to issue limited administrative subpoenas for licensing documents. Additionally, TCOLE has not subscribed to receive automatic criminal history updates through the DPS system to ensure timely access to key licensee eligibility information. The commission also lacks access to information about licensees' ongoing fitness for duty and the authority to temporarily suspend licensees found to be unfit for duty. Further, statute does not adequately ensure due process for temporary license suspensions. Aligning TCOLE's statutes and procedures with best practices would help improve the agency's effectiveness in protecting both licensees and the public.

Key Recommendations

- Direct TCOLE to work with DPS to subscribe to rap backs on fingerprint-based criminal background checks for all licensure applicants and licensees.
- Clearly authorize TCOLE to maintain confidentiality of complainants when possible.
- Explicitly authorize TCOLE to temporarily suspend a license in cases of imminent threat to public health, safety, or welfare, and require a timeline for due process hearings.
- Require TCOLE to establish and maintain a system for LEAs to report failed fit-for-duty exams or refusals to be examined, and authorize TCOLE to suspend licensees under limited circumstances.

ISSUE 3

TCOLE's Statute Does Not Reflect Some Standard Elements of Sunset Reviews.

This review identified changes needed to authorize the commission to establish advisory committees, conform the commission's statutes to standards Sunset generally applies to all state agencies, and address other standard elements of Sunset reviews.

Key Recommendations

- Update the standard across-the-board requirement related to commission member training.
- Authorize the commission to establish advisory committees in rule.

Fiscal Implication Summary

These recommendations would not result in a significant fiscal impact to the state. Continuing TCOLE with its existing organizational structure would require an annual appropriation of approximately \$5.4 million. The recommendation to establish a blue ribbon panel would have some costs associated with

reimbursements for travel, and other reasonable and necessary costs, but the amount is contingent on the number and locations of meetings, and cannot be estimated at this time. TCOLE's administrative support of the blue ribbon panel could be implemented with the commission's existing resources, as could the other recommendations in this report.