

SUNSET ADVISORY COMMISSION

STAFF REPORT

Texas Commission on Law Enforcement

2022-23

88TH LEGISLATURE



SUNSET ADVISORY COMMISSION



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Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood

TEXAS COMMISSION ON LAW ENFORCEMENT

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HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at sunset.texas.gov/how-sunset-works. The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at sunset.texas.gov.

CURRENT VERSION: Sunset Staff Report

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

Sunset Staff Report with Commission Decisions

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

Sunset Staff Report with Final Results

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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SUMMARY OF SUNSET STAFF REPORT

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.

STATUS OF 2020 SUNSET COMMISSION RECOMMENDATIONS

Texas Commission
on Law Enforcement

Issue 1 - Texas' Approach to Regulating Law Enforcement Is Ineffective.

2020 Recommendation	Status
Change in Statute	
<p>Not adopted by the 87th Legislature</p> <p>1.1. Establish a 15-member blue ribbon panel to comprehensively evaluate and provide recommendations to the Legislature and the Sunset Commission on the regulation of law enforcement in Texas.</p>	<p>Not adopted; recommendation still needed but should be modified. See Issue 1 of this report.</p>
<p>Adopted by the 87th Legislature in SB 713</p> <p>1.2 (Modified) Continue the Texas Commission on Law Enforcement for two years and direct Sunset Commission staff to conduct a limited scope review of TCOLE in the 2022-23 biennium focused on the appropriateness of the recommendations the Sunset Commission made to the 87th Legislature.</p>	<p>Implemented.</p>

Issue 2 - The Commission Does Not Follow Best Contracting Practices for Its IT Services.

2020 Recommendation	Status
Management Action	
<p>Adopted by the Sunset Commission</p> <p>2.1 Direct TCOLE to require regular training for all staff involved in the contracting process.</p>	<p>Implemented. Relevant TCOLE staff have received various state contracting trainings and plan to engage in ongoing trainings.</p>
<p>Adopted by the Sunset Commission</p> <p>2.2 Direct TCOLE to develop a formal contract development and solicitation process for all of its contracts.</p>	<p>Implemented. TCOLE has developed internal contracting processes that comply with state requirements and best practices.</p>
<p>Adopted by the Sunset Commission</p> <p>2.3 Direct TCOLE to include detailed, actionable performance incentives in its contracts.</p>	<p>Implemented. TCOLE has included this requirement in its contracting guidance but has had no new solicitations since developing the guidance.</p>

Issue 3 - Key Elements of TCOLE's Statute and Procedures Do Not Conform to Common Licensing and Regulatory Standards.

2020 Recommendation	Status
Change in Statute	
<p>Not adopted by the 87th Legislature</p> <p>3.1 Require TCOLE to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.</p>	<p>Not adopted; recommendation still needed. See Issue 2 of this report.</p>
<p>Not adopted by the 87th Legislature</p> <p>3.2 Remove a subjective qualification for licensure from statute.</p>	<p>Not adopted; recommendation still needed. See Issue 2 of this report.</p>
<p>Not adopted by the 87th Legislature</p> <p>3.3 Clearly authorize TCOLE to maintain confidentiality of complainants when possible.</p>	<p>Not adopted; recommendation still needed. See Issue 2 of this report.</p>
<p>Not adopted by the 87th Legislature</p> <p>3.4 Clearly authorize TCOLE to issue subpoenas for investigative records.</p>	<p>Not adopted; recommendation still needed. See Issue 2 of this report.</p>
<p>Not adopted by the 87th Legislature</p> <p>3.5 Authorize TCOLE to require confidential examinations of licensees suspected of being impaired. Also, improve the privacy protection for officers by requiring confidentiality for the identity of the reporting individual as well as TCOLE's investigation, deliberation, decision to order an examination, and any documentation developed during this process.</p>	<p>Not adopted; recommendation still needed. See Issue 2 of this report.</p>
<p>Not adopted by the 87th Legislature</p> <p>3.6 Authorize TCOLE to temporarily suspend a license if it finds an imminent threat to public health, safety, or welfare.</p>	<p>Not adopted; recommendation still needed. See Issue 2 of this report.</p>
Management Action	
<p>Adopted by the Sunset Commission</p> <p>3.7 Direct TCOLE to remove subjective and anticompetitive requirements for contracted training providers.</p>	<p>Implemented. TCOLE now evaluates training providers only on the basis of a complete and adequate application and results of the training facility inspection.</p>
<p>Adopted by the Sunset Commission</p> <p>3.8 Direct TCOLE to develop an online complaint submission form.</p>	<p>Implemented. TCOLE added an online submission form for complaints within its jurisdiction to its website in fall 2020.</p>
<p>Adopted by the Sunset Commission</p> <p>3.9 Direct TCOLE to develop a penalty matrix.</p>	<p>Implemented. The commission approved a penalty matrix in September 2021, and TCOLE now uses it to broadly guide its enforcement decisions to ensure they are consistent yet flexible.</p>

2020 Recommendation	Status
<p>Adopted by the Sunset Commission</p> <p>3.10 Direct TCOLE to develop a strategy to analyze and use data in commission decision making.</p>	<p>Implemented. TCOLE purchased the data management system it had contracted to build and is now better able to track and analyze data it collects and provide more comprehensive information to its commission to inform decision making.</p>
<p>Adopted by the Sunset Commission</p> <p>3.11 Direct TCOLE to publish relevant commission information online.</p>	<p>Implemented. TCOLE has improved its website content by more regularly updating its licensing and enforcement statistics, as well as publishing more detailed and up-to-date information about its commission meetings and activities.</p>
<p>Adopted by the Sunset Commission</p> <p>3.12 Direct TCOLE to adopt rules to comply with the statutory requirement to establish a risk-based approach to audits.</p>	<p>Implemented. TCOLE developed a system to score the risk level of the law enforcement agencies it audits based on the number and type of violations found. TCOLE uses this score to prioritize which agencies to audit and updates the score after each audit based on the findings.</p>
<p>Adopted by the Sunset Commission</p> <p>3.13 Direct TCOLE to establish a written policy more clearly separating its administrative and criminal investigations and staff.</p>	<p>Implemented. TCOLE has developed a written internal policy separating its administrative and criminal investigative functions.</p>

Issue 4 - The Texas Commission on Law Enforcement's Statute Does Not Reflect Some Standard Elements of Sunset Reviews.

2020 Recommendation	Status
Change in Statute	
<p>Not adopted by the 87th Legislature</p> <p>4.1 Update the standard across-the-board requirement related to commission member training.</p>	<p>Not adopted; recommendation still needed. See Issue 3 of this report.</p>
<p>Not adopted by the 87th Legislature</p> <p>4.2 Update the commission's statute to reflect the requirements of the person-first respectful language initiative.</p>	<p>Not adopted; recommendation still needed. See Issue 3 of this report.</p>
<p>Not adopted by the 87th Legislature</p> <p>4.3 Authorize the commission to establish advisory committees in rule.</p>	<p>Not adopted; recommendation still needed. See Issue 3 of this report.</p>
Management Action	
<p>Adopted by the Sunset Commission</p> <p>4.4 Direct the commission to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.</p>	<p>Implemented. TCOLE has developed and implemented a rule review plan to ensure all rules undergo a meaningful, regular review pursuant to state law.</p>

AGENCY AT A GLANCE

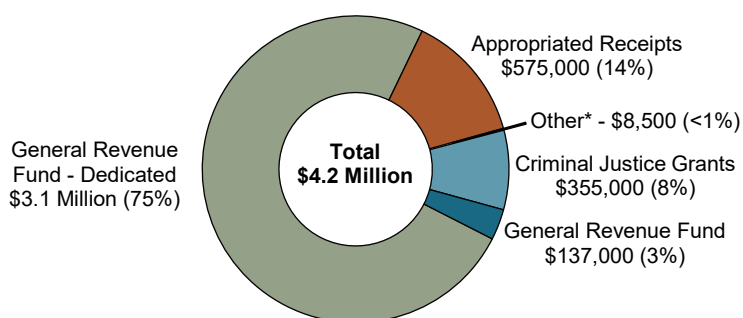
In 1965, the Legislature created what is now the Texas Commission on Law Enforcement (TCOLE) to establish training and education standards for law enforcement personnel. These minimum standards became mandatory for Texas peace officers in 1969, and the agency began to regulate county jailers in 1979. In 2013, TCOLE also began licensing telecommunicators, such as dispatchers and 9-1-1 operators, as well as school marshals, who undergo training to respond to certain crisis situations in schools. Today, TCOLE's mission is to ensure highly trained and ethical law enforcement, corrections, and telecommunications personnel. The agency carries out its mission by performing the following main functions:

- Licensing and certifying peace officers, county jailers, telecommunicators, and school marshals.
- Registering new law enforcement agencies (LEAs), such as police departments and sheriffs' offices, and auditing existing agencies' records.
- Developing basic training and continuing education courses.
- Approving, assisting, and auditing providers of continuing education and basic training courses.
- Investigating complaints and taking disciplinary actions against licensees receiving a conviction or deferred adjudication for certain crimes and for violations of TCOLE rules, including training standards.
- Maintaining and adding names to the Texas Peace Officers' Memorial.

Key Facts

- **Governance.** TCOLE's governing body consists of nine members appointed by the Governor and confirmed by the Senate, who serve staggered six year-terms. Three commission members must be sheriffs, constables, or chiefs of police; three members must be licensees, two of whom must be peace officers in non-supervisory positions; and three members represent the public. The commission meets six times a year to set policies and adopt rules to carry out TCOLE's mission.
- **Funding.** In fiscal year 2021, TCOLE operated on a budget of \$4.2 million, as shown in the chart. About \$3.2 million of TCOLE's budget comes from the Law Enforcement Officer Standards and Education Account, which is funded in part by court fees and supports activities at TCOLE as well as at the Comptroller of Public Accounts and the Texas Department of Public Safety. The agency also deposits its licensure fees into this account, including initial licensure fees for contract facility jailers, and initial and renewal fees for the school marshal license. The agency also takes in appropriated receipts, and state

TCOLE Revenue - FY 2021

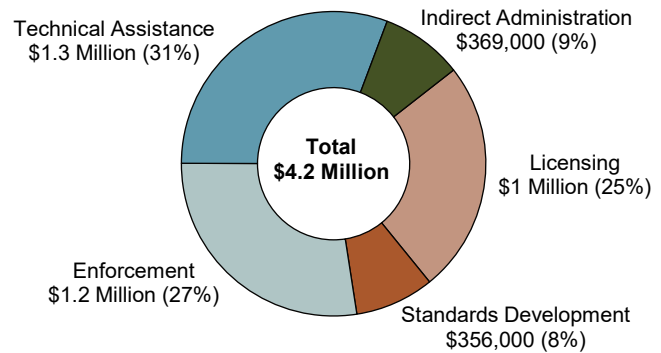


* Other revenue includes \$650 from the Specialty License Plate Fund and \$7,850 from the Officer Flag Fund.

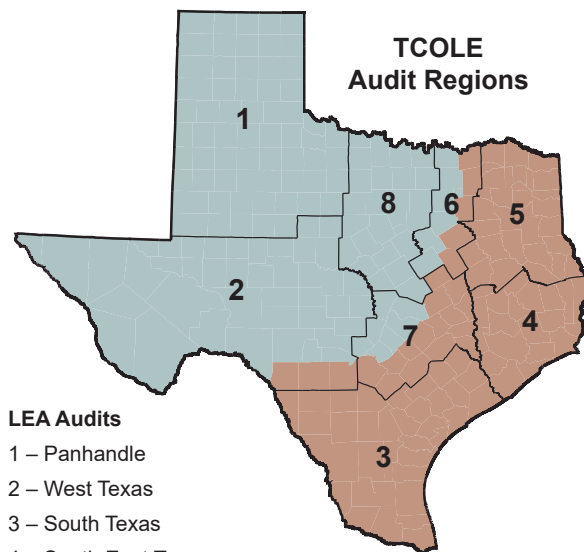
and federal grants administered through the Office of the Governor’s Criminal Justice Division. TCOLE can also receive funds through the Texas Peace Officer Flag Account and a specialty license plate account, which are used to fulfill the statutory requirement of providing state flags to families of deceased Texas peace officers.

As shown in the chart, the agency spent just over \$4.2 million in fiscal year 2021, with about 60 percent going to enforcement and technical assistance, including providing trainings and responding to inquiries from licensees, LEAs, and training providers. A description of TCOLE’s use of historically underutilized businesses in purchasing goods and services for fiscal years 2019-21 is included in Appendix A.

TCOLE Expenditures - FY 2021



- **Staffing.** During the 87th session, the Legislature increased TCOLE’s FTE cap from 53.6 to 67.6 FTEs. As of the end of fiscal year 2021 TCOLE employed 53 full-time staff, including 10 regional field service agents who audit LEAs and training providers throughout the state, shown on the map. Appendix B compares TCOLE’s workforce to the percentage of minorities in the statewide civilian labor force for the past three years.



LEA Audits

- 1 – Panhandle
- 2 – West Texas
- 3 – South Texas
- 4 – South East Texas
- 5 – North East Texas
- 6 – Northeast Central Texas
- 7 – Central Texas
- 8 – Northwest Central Texas

Training Provider Audits

- Region 1
- Region 2

- **Law enforcement personnel.** TCOLE licenses peace officers, county jailers, telecommunicators, and school marshals across Texas. Active licensees are persons who have completed required training, passed the state licensing exam, and remain in compliance with their continuing education requirements. An active licensee must be “appointed,” or hired, by an LEA to perform law enforcement duties. Law enforcement agencies must report their employees’ appointment and ultimate separation to TCOLE. If licensees are retired or no longer employed by LEA and do not maintain their continuing education, their licenses are placed in inactive status. The table on the following page, *TCOLE Licenses*, shows the number of active, appointed, and inactive licenses in fiscal year 2021 by license type. Since individuals may hold multiple licenses or appointments, such as peace officers who also hold jailer licenses, the number of individuals who hold licenses is lower than the totals shown in the table on the following page. TCOLE performs a biennial check of licensees’ compliance with training standards, most of which are on a two-year completion cycle. The agency performed its last compliance check in fiscal year 2020, resulting in 558 reprimands for noncompliance.

TCOLE Licenses - FY 2021

License Type	Description	Active	Appointed	Inactive
Peace Officer	A person the state has vested with law enforcement authority, including the power to make arrests.	88,998	78,444	128,436
County Jailer	A person who oversees inmates and enforces their confinement in a county jail.	37,807	25,552	185,903
Telecommunications Operator	A person who manages emergency phone calls and radio calls, and transfers them appropriately.	13,597	10,009	22,038
School Marshal	A person employed and appointed by a school to respond to certain crisis situations.	290	256	108
Total		140,692	35,817	336,485

- Law enforcement agencies (LEAs).** TCOLE oversees more than 2,800 LEAs in Texas, examples of which are listed in the textbox. The majority of these agencies are small, with 60 percent employing fewer than 10 officers. In the last five fiscal years, TCOLE has registered 192 new LEAs. Applicants to establish a new law enforcement agency must submit documentation on their funding, physical assets, policies, and other requirements. TCOLE audits all LEAs at least once every five years to ensure compliance with basic record-keeping standards. In fiscal year 2021, TCOLE's field service agents audited 569 law enforcement agencies.

Examples of Law Enforcement Agencies

Municipal police departments	Hospital police	District attorneys' offices
Sheriffs' offices	City marshals' offices	County courts
Constables' offices	Fire marshals' offices	District courts
Communication centers	Emergency services district employees	County park ranger
9-1-1 call centers	County correctional facilities	Parole and probation officers
Independent school district police	Detention centers	Port authorities
College and university police	County attorneys' offices	State agencies
Airport police		Water districts

- Training standards and providers.** TCOLE develops state standards for all licensees' mandatory basic training, for example on arrest procedures and professional ethics for peace officers, and continuing education, for example on cultural diversity for peace officers and jailers. The agency contracts with academies and other training providers to provide nearly all required training, including two providers who offer the training course for school marshals. TCOLE also approves third-party licensing exam sites to ensure security and proper exam protocols.

TCOLE inspects potential new training providers before awarding a contract to offer required basic training or continuing education. TCOLE also conducts regular audits to ensure providers comply with state curriculum, record-keeping, and other requirements. At the end of fiscal year 2021, TCOLE contracted with 319 training providers, including 114 academies; one "academic alternative" (Austin Community College) offering college courses that lead to basic licensure; and 204 providers offering only continuing education courses.

- **Enforcement.** TCOLE investigates potential violations of training and administrative standards and reported criminal convictions. TCOLE does not investigate or take action against a license for alleged violations of standards of conduct or alleged criminal actions that do not result in a conviction or deferred adjudication; however, a licensee's employer could take employment action for such misconduct. TCOLE's enforcement activity for fiscal year 2021 is summarized in the table.
- **Texas Peace Officers' Memorial.** TCOLE reviews and approves nominations for the monument on the Texas Capitol grounds bearing the names of Texas peace officers killed in the line of duty. TCOLE works with the Texas Peace Officers' Memorial Ceremony Committee to plan an annual ceremony at the Texas Capitol, and provides flags to the officers' families.

TCOLE Disciplinary Actions - FY 2021

Revocations	
Criminal Conduct	16
Other	8
Suspensions	
Criminal Conduct	44
Noncompliance	113
Surrenders	46
Reprimands*	558
Cancellations	3

* TCOLE proactively checks for noncompliance biennially. The last noncompliance check in fiscal year 2020 resulted in 558 reprimands for noncompliance issued in 2021.

ISSUE 1

Texas’ Approach to Regulating Law Enforcement Is Ineffective.

Background

Texas regulates law enforcement through a bifurcated approach. At the state level, the Texas Commission on Law Enforcement (TCOLE) licenses and sets minimum standards for initial training and continuing education for peace officers, jailers, telecommunicators, and school marshals. Locally, law enforcement agencies (LEAs) such as local police departments and sheriffs’ offices appoint law enforcement personnel and are primarily responsible for setting professional conduct standards. The table below describes the regulatory responsibility split between TCOLE and LEAs.

Texas Regulatory Standards for Law Enforcement Personnel

Initial Licensure	Continuing Education	Professional Conduct	Accountability
TCOLE sets and oversees minimum training requirements for entry-level personnel and ensures applicants meet minimum age and educational requirements for licensure.	TCOLE sets and enforces minimum continuing education requirements for licensed personnel and approves additional courses LEAs or other training providers offer beyond those required for statewide licensure.	LEAs set and enforce their own standards of professional conduct for law enforcement.	TCOLE can take administrative action against a licensee for certain criminal violations, or failure to meet continuing education requirements. LEAs may discipline or discharge personnel that fail to meet their professional conduct standards.

The Sunset review of TCOLE found the lack of statewide professional conduct standards, inadequate and uncoordinated training, and inability to hold law enforcement accountable to professional standards create significant gaps in law enforcement regulation that critically undermine the purpose and benefits of statewide licensure and, more importantly, do not best ensure public safety and welfare.

Findings

Texas’ bifurcated approach to law enforcement regulation was put in place to allow for flexibility, but has resulted in a fragmented, outdated system with inconsistent application and poor accountability that no longer best protects the public or law enforcement personnel. Rather than attempting to repair a fundamentally broken system, it is time to take a comprehensive look at how the state promotes a modern and professional regulatory framework for law enforcement and make needed changes to protect the health, safety, and welfare of Texans.

Texas’ bifurcated approach to law enforcement regulation has resulted in a fragmented, outdated system.

Texas has a continuing need to establish and enforce statewide standards for law enforcement.

Law enforcement personnel play an important role in ensuring the safety and security of Texans, serving as leaders in their communities, first responders to

Statewide oversight helps ensure each LEA has the policies, equipment, and personnel to protect and serve their communities.

emergencies, and vital public servants. For example, in 2020, Texas peace officers responded to reports of 130,034 violent crimes and 652,940 property crimes.¹ TCOLE sets and enforces statewide training standards, granting only qualified individuals a license that imparts both significant authority and responsibility. Especially for peace officers and school marshals, TCOLE licensure imparts a duty to protect the public and enforce the law. But the public does not get to choose which peace officer responds to a call for assistance or the 911 operator who answers an emergency call. Texas needs to ensure all of its law enforcement personnel meet required standards.

Statewide oversight of LEAs is also important. Texas has delegated to LEAs the authority to enforce standards of professional conduct for law enforcement personnel, relying on the employment relationship to identify and address conduct issues. Because LEAs are responsible for enforcing standards, it is important that both the standards and their enforcement are consistent, which in turn set clear expectations when licensees and the public interact that do not differ based on location. Further, statewide oversight helps ensure each LEA has the policies, equipment, and personnel in place to protect and serve their communities while ensuring the professional conduct of its employees.

Every state regulates law enforcement at the state level, but the structure and amount of regulation vary. Nearly every state, including Texas, licenses or certifies law enforcement personnel, and certifies law enforcement training providers. Texas is in the minority of 12 states that use an independent agency to regulate law enforcement. In most other states, law enforcement regulation is consolidated in a larger agency such as the state police, state law enforcement academy, or office of the attorney general.

Texas lacks statewide standards of professional conduct for law enforcement personnel, instead relying on often inconsistent local standards.

Statewide standards provide a level of protection from liability for law enforcement by providing a clear benchmark for acceptable action.

- **Limited state regulation.** A state regulatory agency should be able to set and enforce standards of professional conduct for its licensees to best protect the public. Besides creating clear expectations for licensees and the public, defining appropriate conduct for licensees also creates a more consistent and fair basis to evaluate the actions of licensees. Compliance with statewide standards of professional conduct also provides a level of protection from liability for law enforcement by providing a clear benchmark for acceptable actions. During the 87th Legislative Session, the Legislature recognized the benefits of standards of professional conduct in requiring TCOLE, in consultation with the Law Enforcement Management Institute of Texas (LEMIT) at Sam Houston State University, and other interested parties, to develop model policies and training curriculum for licensees' duties to intervene and to render aid, and on chokeholds, which were published in fiscal year 2022. LEAs must adopt policies on those topics, which may be the model policies or more detailed policies the LEA develops.² Currently, TCOLE has almost no other role in setting or enforcing professional

conduct standards. By contrast, in other state occupational licensing and regulatory programs, particularly for professions of public trust, licensees must meet state professional conduct standards. For example, doctors licensed by the Texas Medical Board and attorneys licensed by the State Bar of Texas must uphold statewide standards of conduct no matter where they work in the state.³

- **Inconsistent local policies.** Instead of setting statewide standards of professional conduct for law enforcement, Texas primarily relies on the 2,800 LEAs statewide to set and enforce their own local standards. This creates a patchwork of local policies that define professional conduct differently within each LEA's jurisdiction, creating confusion and unclear expectations for licensees as well as the public. Further, inconsistent local standards of professional conduct create risk for law enforcement. Criminals do not stop at jurisdictional boundaries, and peace officers may find that acceptable conduct under a policy in one jurisdiction creates criminal or civil liability in another. For example, two DPS officers are being sued over a 2019 pursuit that ended in a shooting in Dallas. The pursuit was authorized under DPS policy but would not have been authorized under Dallas Police policy.⁴ The textbox provides examples of policies LEAs establish independently and inconsistently at the local level in the absence of statewide professional conduct standards. The LEAs in Texas differ in size, scope, resources, and leadership, and the communities they serve are all unique. While having the flexibility to set policies locally is appropriate to account for those differences, minimum standards of professional conduct for law enforcement should not vary significantly. Establishing minimum statewide standards of professional conduct would provide a baseline for law enforcement professionalism in Texas.

Peace officers may find acceptable conduct in one jurisdiction creates criminal or civil liability in another.

Examples of LEA Policies

- Incident Command
- Vehicle Pursuit
- Use of Force
- Use of Tactical Teams
- Active Shooter Response
- Use of Surveillance Techniques

TCOLE's minimum training standards are outdated and ultimately do not meet the evolving needs of law enforcement personnel in Texas.

TCOLE is responsible for ensuring the required training for law enforcement licensees is up to date and high quality. Further, TCOLE must ensure licensees comply with training requirements. However, the last time Texas comprehensively evaluated the core tasks was in 1997 for peace officers and 2001 for jailers.⁵ Texas has never evaluated the core tasks for telecommunicators. In the past two decades, there have been significant changes in law enforcement technologies, tasks, and expectations that are not addressed in TCOLE's minimum training and education standards.

As previously noted, without statewide standards of professional conduct for law enforcement, the local standards differ significantly across the state. TCOLE cannot establish a statewide training curriculum that addresses all of these varying standards. This misalignment exacerbates the disconnect

between modern training needs and the training TCOLE currently develops and oversees. Additionally, the Legislature has taken a hands-on approach to setting training standards for law enforcement personnel, adding dozens of specific training requirements to statute, often in response to specific incidents, some of which have become obsolete according to law enforcement stakeholders. As a result, a proactive, holistic review of the key duties and training needs for law enforcement personnel in Texas is long overdue.

Peace officers receive the same hours of training on canine encounters as they do for human trafficking.

- **Outdated basic training.** A regulatory agency’s basic training standards for licensure should ensure the competency of an entry-level professional and, with a portable state license, should focus on the duties and scenarios licensees could encounter anywhere in Texas. However, diverse industry stakeholders and respondents to Sunset’s surveys of law enforcement personnel, training providers, and agencies have suggested training standards do not meet the needs of law enforcement personnel in Texas.

Peace officers. In 2021, TCOLE published the latest revision of its required Basic Peace Officer Course (BPOC), taken in training academies, summarized in Appendix C. The 87th Legislature increased the required number of training hours for peace officers from 696 to 720 by adding additional hours to existing topics, as shown in the table below.⁶ TCOLE’s updates to the course structure were based on input from a limited number of stakeholders rather than a comprehensive review of core peace officer tasks. However, the required training hours for peace officers are still significantly less than the hours of training required for other regulated professions in the state, such as cosmetologists with 1,000 hours of training, and air conditioning and refrigeration contractors with 2,000 hours.⁷ While various topics in the BPOC have overlapping subject matter, the number of hours dedicated to certain key areas of public safety, listed in the textbox on the following page, do not always reflect what new peace officers actually need. For example, peace officers receive the same number of hours of dedicated training on canine encounters — four hours — as they do for human trafficking. TCOLE’s required curriculum includes only 40 hours on arrest and control procedures, one of peace officers’ primary tasks.

2021 Changes to BPOC

Course	Previous	2021 Revision
Code of Criminal Procedure	8 hours	12 hours
Health and Safety Code and Controlled Substance Act	8 hours	12 hours
Sexual Assault and Family Violence	4 hours	12 hours
Missing and Exploited Children	4 hours	8 hours
Force Options Theory	24 hours	28 hours

Many stakeholders Sunset surveyed suggested some topics included in the BPOC, like criminal asset forfeiture, while required in statute, are not necessary for most entry-level peace officers. Meanwhile, other topics like community relations are notably absent but increasingly relevant for

peace officers. Training providers are left to fill the gaps, but do so inconsistently, and many of the state's larger police academies heavily supplement the state's BPOC curriculum, all at a cost to the LEAs. For example, the Dallas Police Academy, which offers a basic course more than twice as long as TCOLE's BPOC, trains on topics such as rape crisis intervention, which is absent from the BPOC but relevant throughout the state.⁸ Since local police academies have unequal resources and capacity, the lack of consistent training requirements does a disservice to licensees, to LEAs that must expend limited resources to supplement training, and to Texans who deserve consistently well-trained law enforcement personnel.

While some required training may be unnecessary, stakeholders report that Texas lacks training to help new officers continue to develop once they have finished the BPOC. Specifically, Texas has no requirement for field training officer programs in which a new academy graduate works closely with a more experienced officer who continues training and evaluates the new officer in the field for several months after the academy. Several stakeholders asserted such training is critically important, but it is not required for TCOLE licensure.

County jailers. Jailers must complete a 120-hour Basic County Corrections Course, as detailed in Appendix C, which was last updated in 2019. Similar to the BPOC, stakeholders indicated a need for additional training, especially in the area of mental health. Stakeholders reported seeing a marked increase in inmates with mental health issues, and increased wait times to get an inmate a bed in a state mental health facility. Jailers are only required to have eight hours of mental health training, but must regularly deal with significant inmate mental health issues, risking the safety of inmates, jailers, and other jail staff.

Telecommunicators. Telecommunicators must complete an 80-hour basic telecommunicators course, as shown in Appendix C, for licensure. Stakeholders reported the course is very compressed and some important topics, like mental health, are abbreviated. Further, the course does not include other critical topics, such as the telecommunicator's role in incident command, which involves coordinating and managing the response to an emergency situation, such as active shooter, where telecommunicators serve a critical role connecting the public and responders from various agencies. In 2021, TCOLE added statutorily required telecommunicator cardio-pulmonary resuscitation (CPR) training to the licensing course. To fit this additional training into the 80-hour course, other topics had to be compressed, potentially compromising the quality of training telecommunicators receive in those areas.

Training Requirement Examples

- Civilian Interaction: 2 hours
- Canine Interaction: 4 hours
- Racial Profiling: 4 hours
- Asset Forfeiture: 4 hours
- Identity Crimes: 4 hours
- De-escalation: 8 hours
- Victims of Crime: 10 hours
- Arrest and Control: 40 hours

Jailers only receive eight hours of mental health training, but regularly deal with significant inmate mental health issues.

TCOLE has not addressed the security needs of schools and the effectiveness of the school marshal training requirements.

Supervisory personnel receive the same continuing education instruction as new personnel.

School marshals. School marshals must complete an 80-hour course, largely focused on active shooter situations and the use of deadly force.⁹ This program was created in 2013, and TCOLE has not undertaken a comprehensive assessment of the needs of schools and the effectiveness of its training requirements. Such an assessment could result in updated training, including addressing changes in school safety needs and expectations, to help ensure licensees are better trained to protect students and school employees.¹⁰

- **Insufficient continuing education.** In an industry with dynamic technologies, techniques, and public expectations, continuing education is critical to ensure law enforcement licensees remain proficient in key skills, acquire new skills as needed, and have a working knowledge of new developments in the profession. In Texas, however, law enforcement personnel have minimal requirements and oversight to ensure their ongoing competency.

Peace officers. State law requires all peace officers take 40 hours of continuing education every two years, including a course on legislative updates.¹¹ More junior officers must take four specific courses every four years — cultural diversity, mental health crisis intervention, de-escalation, and special investigative topics.¹² In addition, state law requires officers in specific roles to take additional preparatory courses for those assignments with varying frequency, summarized in Appendix D.¹³ Officers that earn an intermediate certification are permanently exempted from the four-year training requirements.¹⁴ Courses are not scaled to the officer's level of responsibility, so supervisory personnel receive the same instruction as new personnel, potentially lacking additional depth or topics they might need. TCOLE does not require licensees to periodically refresh their training in technical skills, such as police driving, or in key soft skills such as communications or professional ethics, although other professions such as doctors and lawyers regularly do.¹⁵

County jailers. State law requires jailers to take one eight-hour course in cultural diversity every four years.¹⁶ Peace officers have a similar requirement, but it is waived when the officer achieves the intermediate certification. Jailers are not required to take training on legal updates affecting their profession, or in critical skills, such as mental health response and de-escalation. Further, stakeholders raised concerns with the limited continuing education courses for jailers to refresh or develop new skills. Although jailers designated to carry a firearm for certain responsibilities must demonstrate weapons proficiency annually, failure to do so does not affect the individual's license.¹⁷

Telecommunicators. Telecommunicators must take 20 hours of continuing education every two years, and telecommunicator CPR, which is now also part of the basic course, is the only required topic.¹⁸ Telecommunicators are also federally mandated to take four hours of training every six months on telecommunications devices for people who are deaf or hard

of hearing.¹⁹ Since these two requirements exceed the 20-hour requirement, telecommunicators are not required or incentivized to develop or improve other skills. Further, similar to jailers, stakeholders report there are limited continuing education courses available for telecommunicators.

School marshals. State law requires school marshals to complete a 16-hour renewal course biennially, with components of both classroom and simulation training. School marshals must also undergo a psychological examination, demonstrate handgun proficiency, and pass a written examination for renewal.²⁰ The renewal course is an abbreviated refresher course covering the same topics school marshals learn for initial licensure, so licensees do not expand their skills through the training.

- **Lack of leadership training.** Texas requires minimal leadership training for police chiefs and sheriffs.

Police chiefs. New police chiefs of a municipal, Independent School District (ISD), or higher education institution police department must take 80 hours of training composed of the 40-hour New Chief Development Program and the 40-hour Texas Police Chief Leadership Series, both through LEMIT, within two years of being appointed as chief.²¹ LEMIT develops both courses and TCOLE approves the topics and curriculum. Chiefs of other types of LEAs may voluntarily choose to attend the New Chief Development Program if space is available and at almost triple the cost, but the program is not required.²² Stakeholders have indicated neither of these courses cover certain important topics, such as incident command. Further, the courses are sometimes duplicative, often featuring the exact same presentations, so new police chiefs receive the same training twice instead of 80 hours of unique material.

Experienced police chiefs of a municipal, ISD, or higher education institution police department must take the 40-hour Texas Police Chief Leadership Series from LEMIT every two years.²³ Other LEA chiefs may voluntarily attend the training, but it is not required. Incident command is also not normally included in this training and was last taught over six years ago.

Sheriffs. TCOLE has no authority to set training requirements for new sheriffs with an active peace officer license outside of those required for all peace officers. The Sheriff's Association of Texas conducts voluntary training for newly elected sheriffs, such as on employee law, as well as voluntary continuing education for all sheriffs.²⁴ TCOLE also does not have the authority to set continuing education requirements for sheriffs with an active peace officer license other than the training required of all peace officers.

- **Inflexible and outdated standards.** Prescribing specific training topics in state law limits the ability of a regulatory entity to evaluate and update training standards on a regular basis. TCOLE is tasked with developing and updating the state's training standards for licensure and continuing education of law enforcement personnel but has limited authority to adapt

Incident command training is not required for police chiefs.

Statutorily prescribed training topics limit TCOLE's ability to evaluate and update training requirements.

its curriculum. More than half of the topics and 70 percent of the hours in the BPOC are statutorily required, and while the Legislature regularly adds new topics, it rarely updates or repeals them. As a result, some of TCOLE's training is out-of-date and does not address current needs. This is also true for TCOLE's continuing education requirements, where statutory deadlines to complete training on certain topics do not align with TCOLE's established training cycles. Appendix D outlines the inflexible and unwieldy continuing education requirements that create confusion for licensees and LEAs.

The state's regulation of law enforcement personnel and agencies is, by and large, toothless.

The state cannot ensure adequate accountability for law enforcement.

Currently, the state's regulation of law enforcement personnel and agencies is, by and large, toothless. Regulatory agencies should be able to hold licensees accountable for administrative violations, violations of standards of conduct, and criminal violations. However, state law only allows TCOLE to hold licensees accountable for criminal convictions or deferred adjudications, and violations of TCOLE statute and rule, including continuing education requirements. Enforcing standards of professional conduct is left to each local LEA. Similarly, TCOLE has extremely limited authority to set substantive requirements for LEAs, such as certain policies, personnel, and equipment they must have to be registered as an LEA.

In FY 2021, about 72% of TCOLE's administrative enforcement actions involved continuing education deficiencies.

- **TCOLE's constrained authority to address misconduct.** A regulatory agency should have clear authority to enforce its rules and law, but TCOLE can only take administrative action against a licensee if the individual is convicted or given deferred adjudication for a felony or certain misdemeanor crimes.²⁵ However, not all misconduct can or should be criminally charged, as many behaviors that indicate deficient professional judgment are not criminal. Unlike other state regulatory agencies, TCOLE lacks explicit statutory authority to take action against other types of serious misconduct, even when the behavior is relevant to an individual's professionalism and fitness for licensure.²⁶ For example, TCOLE was not able to take action against an officer who gave a dog feces sandwich to a homeless person in San Antonio in 2016.²⁷ The officer was fired, rehired by the city after arbitration, and then subsequently fired again for a second incident involving the use of feces, but remains employed as a peace officer by a different LEA.²⁸ In contrast, if a licensee fails to maintain requirements for licensure, like continuing education, TCOLE has the authority to suspend, reprimand, or even revoke the license.²⁹ In fiscal year 2021, the majority of TCOLE's administrative enforcement actions, about 72 percent, were taken in response to continuing education deficiencies.
- **Patchwork of local oversight creates regulatory gaps.** As noted above, each LEA sets standards of professional conduct for its own employees and may terminate an individual's employment for serious misconduct. TCOLE relies on a separation of employment reporting form, called

an F-5 form, to track when a licensee's employment with an LEA ends. The form includes a licensee's discharge status — honorable, general, or dishonorable — that provides notice to future employers about potential misconduct. In the last five fiscal years, TCOLE has received on average 544 F-5 forms per year, about 3 percent of the total discharges, with a dishonorable discharge. Additional background for the F-5 process is provided in the textbox, *F-5 History*.

F-5 History

The F-5 process was established in 1995, with TCOLE originally serving as a data depository for F-5 forms. Both the LEA and licensee could submit their versions of events regarding separation to TCOLE, which would then provide those records to the next LEA considering hiring the licensee. No official report or recorded status existed at this time. However, in 2005, the Legislature expressed concern that licensee resignations were being negotiated, resulting in the partial or inadequate documentation of the circumstances of separation, allowing licensees to obtain future employment under false pretenses. To address this concern, the F-5 process was restructured as a contested case proceeding, and discharge categories were established to clearly indicate a licensee's negative employment history. Recognizing licensees with negative employment histories should be removed from their positions, the Legislature gave TCOLE authority to revoke licenses on a second dishonorable discharge in 2007.

Licensees may appeal dishonorable discharges at the State Office of Administrative Hearings, as detailed in Appendix E. However, these proceedings are costly and require travel, which often disincentivizes LEAs from attending the hearing, particularly as about 60 percent of LEAs have a staff with 10 or fewer law enforcement personnel and limited resources to spend on what is essentially an employment decision.

The F-5 process has been used to provide the state with a way to take enforcement action against a licensee for continued misconduct. Receiving two honorable discharges triggers a license revocation TCOLE ultimately enforces, although not all professional misconduct receives a dishonorable discharge from an LEA. In practice, the F-5 process has only resulted in 14 license revocations in the last five fiscal years, despite TCOLE receiving notice of 2,621 dishonorable discharges during the same time.³⁰ This large difference reflects the rarity of a licensee receiving a second dishonorable discharge, particularly as the F-5 process allows the licensee to appeal each discharge status.

- **Limited state regulation of LEAs.** Regulation should be implemented at the minimum level necessary to protect the public, which often precludes the need to regulate businesses when individual practitioners are regulated. In fact, Sunset has often recommended eliminating regulation of businesses, such as chiropractic facilities, when state credentialing has no real benefit.³¹ However, in some circumstances, public health, safety, and welfare concerns justify regulating the business as well as the practicing individual, such as pharmacies and the personnel who work there.³² TCOLE does not have authority to approve LEAs. Instead, TCOLE registers LEAs so they

The F-5 process has only resulted in 14 license revocations in the last five fiscal years.

can employ law enforcement personnel. While LEAs are held locally accountable to some extent, TCOLE's nominal oversight authority leaves the professionalism and capabilities of some LEAs in question.

TCOLE does not have the authority to approve or disapprove formation of a new LEA.

Inadequate authority to set standards. TCOLE lacks clear authority to deny registration to an LEA. Under state law, more than 40 types of organizations can become LEAs and appoint peace officers, but TCOLE cannot set substantive requirements for LEAs, such as facilities and equipment standards.³³ In contrast, other state agencies are able to set minimum standards for high-risk employers. For example, the Texas Board of Pharmacy licenses pharmacies and has specific authority to set and enforce substantive requirements, such as drug storage protocols and required equipment.³⁴ LEAs created since 2009 must provide TCOLE information about the need for, resources available to, and operational policies of the local agency.³⁵ However, this is a one-time reporting requirement, with no ongoing check. While TCOLE has adopted rules for registering new LEAs, the commission lacks clear statutory authority for these rules and has never denied a LEA registration. Near universal feedback from stakeholders indicates many of these new LEAs lack the capability to maintain standards for training and operations, have insufficiently experienced leadership, have difficulty coordinating responses with other departments, and may provide a haven for substandard officers.

TCOLE often lacks authority to take action against an LEA.

Insufficient enforcement authority. TCOLE cannot take action against an LEA or revoke its registration, even if it determines the LEA has substandard facilities or equipment for critical law enforcement functions, such as detaining suspects, storing evidence, emergency communications, or vehicle pursuits. TCOLE also cannot ensure an LEA has appropriate insurance to cover the risks inherent in law enforcement operations. While statute requires LEAs to adopt certain policies and report specific data to TCOLE, the commission lacks authority to take action for noncompliance in most cases. TCOLE is only authorized to issue administrative sanctions for noncompliance in a few narrow circumstances, such as failing to submit a report on racial profiling.³⁶ Even when statute requires an LEA to have a certain policy, TCOLE often lacks the authority to verify the adoption of the policy, whether it meets the statutory intent, or if it is even being followed. For example, statute requires LEAs to adopt a detailed policy prohibiting racial profiling and submit racial profiling reports to TCOLE.³⁷ However, TCOLE has no authority to audit these policies and only tracks whether an LEA files the required reports.

A blue ribbon panel on law enforcement professionalism could provide expertise and recommendations on improving the professional standards for law enforcement in Texas.

Over the course of its review of TCOLE, Sunset staff have identified numerous problems fundamental to the effective regulation and oversight of law enforcement in Texas, as detailed above. Elsewhere in this report, Sunset staff

makes recommendations to improve the functions of TCOLE as a state agency. However, it would be inappropriate for Sunset staff to evaluate the underlying policy of the state's approach to law enforcement professionalism. Given the complex and multi-faceted nature of the problems identified, a blue ribbon panel comprised of subject matter experts, industry participants, and public representatives would be better suited to comprehensively review, evaluate, and recommend changes needed to effectively, consistently, and transparently ensure the professionalism of law enforcement in Texas.

In the past, the governor and Legislature have assembled diverse commissions and task forces to evaluate and provide expertise on priority policy areas. For example, in 1982, Governor Clements established a blue ribbon panel to comprehensively review and evaluate Texas' criminal justice system, recognizing such an evaluation had not been conducted in recent history.³⁸ The panel was charged to develop a master plan to bring the state's corrections system into the twenty-first century and make recommendations to the Office of the Governor on legislation or other action.³⁹ To accomplish its charge, the commission held regular meetings and, over the course of a year, developed recommendations on particular areas, such as corrections classification and facilities, many of which were enacted in law.

More recently, the Legislature established task forces on mental health services and human trafficking prevention. The Sunset Commission itself made use of a blue ribbon panel during the review of the Texas State Board of Dental Examiners, directing the board to create an independent blue ribbon panel comprised of subject matter experts to review data and provide recommendations to address dental anesthesia accidents and deaths and emergency protocols.⁴⁰ The Legislature has also established commissions to examine the area of criminal justice, such as the Timothy Cole Exoneration Review Commission in 2015.

A blue ribbon panel could best recommend changes needed to ensure the professionalism of law enforcement in Texas.

Sunset Staff Recommendations

Change in Statute

1.1 Establish a blue ribbon panel on law enforcement professionalism to comprehensively evaluate and make recommendations on the needed professional standards for law enforcement in Texas.

This recommendation would establish a 15-member blue ribbon panel on law enforcement professionalism, appointed by the governor, lieutenant governor, and speaker of the House of Representatives, to evaluate and provide recommendations to the Sunset Commission and Legislature on the standards for law enforcement in Texas. The panel would focus on three key areas:

1. Professional conduct standards
2. Licensee training and education requirements
3. Ensuring the professionalism of licensees and law enforcement agencies

The governor, lieutenant governor, and speaker of the House of Representatives would each appoint a public member and three law enforcement industry members. The three industry representatives must

include a representative from a rural county or small municipality, and a law enforcement agency. These members would be joined by the chairs of the Senate Criminal Justice Committee and House Homeland Security and Public Safety Committee, and the chair of the board of the District and County Attorneys Association or their designee. The panel would be required to meet monthly, authorized to meet virtually, and granted subpoena power.

The panel's preliminary drafts and recommendations; memoranda expressing opinions, formulations, or policy recommendations; and notes and correspondence with private individuals would be made confidential. Approval of the panel's individual recommendations would require a simple majority, but approval of the panel's final report would require a supermajority of 10 votes.

Under this recommendation, the blue ribbon panel on law enforcement professionalism would be authorized to and should establish advisory committees as needed to focus on the three key areas noted above or any other subjects. Any advisory committees should include representation from law enforcement personnel, state and local government, higher education, advocacy groups, and the public, as well as any other expertise or perspectives necessary to comprehensively evaluate and provide recommendations to improve the professionalism of law enforcement in Texas.

The full panel should hold regular public meetings to solicit input and report on its progress, which would be subject to the Open Meetings Act. Members of the panel and advisory committees would not be compensated, but could be reimbursed for travel or other reasonable and necessary expenses. The governor, lieutenant governor, and speaker would appoint members of the panel by September 1, 2023, and the panel would be required to deliver a report with recommendations to the Sunset Commission and Legislature no later than June 1, 2024, giving the Sunset Commission and legislative oversight committees time to review the recommendations and draft any resulting proposed legislation. The report should be based on the guiding questions below.

Guiding Questions

1. Should Texas have statewide standards of professional conduct for law enforcement?
 - a) If so, in what areas should the state have professional conduct standards?
 - b) How should standards of professional conduct be developed, reviewed, and if necessary, updated?
2. What education and training requirements are needed for law enforcement personnel?
 - a) What basic training is required for each license type and how frequently should it be reviewed and updated?
 - b) Which continuing education courses are required for each license type and how frequently should they be reviewed and updated?
3. How can Texas best ensure professionalism of law enforcement?
 - a) Should TCOLE be authorized to address licensee misconduct?
 - b) Under what conditions should TCOLE be able to request the examination of a licensee suspected of being impaired?
 - c) How should the administrative process protect licensees' due process?
 - d) Are any changes needed to the F-5 process, including TCOLE's role in it?
 - e) Should TCOLE have authority to set or enforce professional standards for law enforcement agencies?

1.2 Continue the Texas Commission on Law Enforcement for two years.

This recommendation would continue TCOLE as the state's independent agency for law enforcement licensing and regulation until September 1, 2025. The Sunset Commission would perform a limited purpose review of TCOLE to evaluate the blue ribbon panel on law enforcement professionalism's recommendations related to the commission, and TCOLE's implementation of the other recommendations adopted by the Sunset Commission and the 88th Legislature.

Fiscal Implication

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 on law enforcement professionalism 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. Any support required of TCOLE could be implemented with existing resources.

¹ Department of Public Safety (DPS), *Crime in Texas 2020*, DPS, 2020, p. 2.

² Chapter 722 (HB 3712), Acts of the 87th Texas Legislature, Regular Session, 2021.

³ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 164.053, Texas Occupations Code; Section 81.072(d), Texas Government Code; State Bar of Texas, *Texas Disciplinary Rules of Professional Conduct, 2022*, accessed online November 8, 2022, <https://www.texasbar.com/AM/Template.cfm?Section=Home&ContentID=27271&Template=/CM/ContentDisplay.cfm>.

⁴ Dana Branham, Cassandra Jaramillo, "Troopers who killed driver in South Dallas stopped him for failing to signal turn, records reveal," *The Dallas Morning News*, September 5, 2019, news story accessed online August 23, 2022, <https://www.dallasnews.com/news/2019/09/05/troopers-who-killed-driver-in-south-dallas-stopped-him-for-failing-to-signal-turn-records-reveal/>; Jacob Vaughn, "Mother of Man Shot Dead by Texas State Troopers Sues DPS and Dallas," *Dallas Observer*, August 25, 2021, news story accessed online August 23, 2022, <https://www.dallasobserver.com/news/mother-of-man-slain-by-state-troopers-sues-dps-and-dallas-12275805>.

⁵ Brian Graham-Moore et al., *Texas Peace Officer Job Task Analysis Report*, Texas Commission on Law Enforcement Standards and Education and University of Texas at Austin, 1998; Texas Commission on Law Enforcement Officer Standards and Education, *County Corrections Officer Job Task Analysis Report*, 2001.

⁶ Texas Commission on Law Enforcement, *Basic Peace officers Course #1000720*, accessed online July 25, 2022, <https://www.tcole.texas.gov/sites/default/files/CourseCMU/BPOC%20720.zip>.

⁷ Sections 1302.002(5-c)(B) and 1602.254(b)(3), Texas Occupations Code.

⁸ Dallas Police Academy, *Basic Training Curriculum*, accessed online July 15, 2022, <https://dallaspolice.net/joinpd/Shared%20Documents/DPD%20Basic%20PO%20Course%20Curriculum%20-%207-9-18%20-%20MASTER.pdf>.

⁹ Section 1701.260, Texas Occupations Code.

¹⁰ TCOLE has requested additional funding for the school marshal program in the agency's most recent budget request.

¹¹ Section 1701.351, Texas Occupations Code.

- 12 Section 1701.352(b)(2), Texas Occupations Code.
- 13 Sections 1701.262, 1701.263, 1701.267, 1701.352, 1701.656, and 1701.702(b) and (c), Texas Occupations Code.
- 14 Section 1701.352(b)(2), Texas Occupations Code.
- 15 22 Texas Administrative Code Section 166.2(a)(2) (Physicians); Section 81.113(b), Texas Government Code (Attorneys).
- 16 Section 1701.310(a), Texas Occupations Code.
- 17 Section 1701.355(a-1), Texas Occupations Code.
- 18 Section 1701.352(i)(1), Texas Occupations Code.
- 19 U.S. Department of Justice, Civil Rights Division, Disability Rights Section, “Americans with Disabilities Act Access for 9-1-1 and Telephone Emergency Services,” accessed online August 8, 2022, <https://www.ada.gov/911ta.htm>.
- 20 Section 1701.260(h), Texas Occupations Code.
- 21 Section 96.641(c), Texas Education Code.
- 22 Bill Blackwood Law Enforcement Management Institute of Texas, *New Chief Development Program*, accessed online August 7, 2022, <http://www.lemitonline.org/programs/?mode=view&item=2>.
- 23 Section 96.641(b), Texas Education Code.
- 24 Sheriff’s Association of Texas, “Training/Conferences” accessed online July 25, 2022, <https://www.sheriffstx.org/conferences>.
- 25 Sections 1701.312, 1701.313, 1701.502, and 1701.503, Texas Occupations Code; 37 Texas Administrative Code, Part 7, Chapter 223, Sections 217.1, 223.15, and 223.19 (2017) (Texas Commission on Law Enforcement, *Enforcement*).
- 26 Section 1701.457, Texas Occupations Code.
- 27 Emilie Eaton, “Three San Antonio police officers, fired by SAPD, were later hired in Leon Valley. Here’s Why,” accessed online September 24, 2020, <https://www.expressnews.com/news/local/article/Three-San-Antonio-police-officers-fired-by-SAPD-15383921.php>.
- 28 Elizabeth Ruiz, “SAPD Officer Who Gave Feces Sandwich To Homeless Man Loses Job After Arbitration On Second Offense,” last accessed online October 2, 2020, <https://www.ktsa.com/sapd-officer-who-gave-feces-sandwich-to-homeless-man-loses-job-after-arbitration-on-second-offense/>.
- 29 Sections 1701.501, 1701.502, and 1701.503, Texas Occupations Code; 37 T.A.C. Sections 223.15 and 223.19.
- 30 The previous Sunset report five-year period included fiscal year 2015, which was well above average at 596 dishonorable discharges. This updated five-year period includes fiscal years 2020 and 2021, both of which were significantly below the average with 496 and 513 dishonorable discharges, respectively.
- 31 Texas Sunset Advisory Commission, *Texas Board of Chiropractic Examiners Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, June 2017), pp. 15-17.
- 32 Section 560.001(a), Texas Occupations Code; Sunset Advisory Commission, *Texas State Board of Pharmacy Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, June 2017), pp. 25-26.
- 33 Sections 2.12, 2.121, 2.125, 2.126, and 2.127, Texas Code of Criminal Procedure.
- 34 Section 560.052(a), Texas Occupations Code; 22 T.A.C., Part 15, Chapter 291 (2018)(Texas State Board of Pharmacy, *Pharmacies*).
- 35 Section 1701.163, Texas Occupations Code.
- 36 Section 2.134(g), Texas Code of Criminal Procedure.
- 37 Section 2.132(b), Texas Code of Criminal Procedure.
- 38 Texas Governor Executive Order No WPC-45, June 10, 1982, TRD-824877; Office of the Governor, Criminal Justice Division, “An Inventory of Records at the Texas State Archives 1973 to 1990,” accessed online September 28, 2020, <https://legacy.lib.utexas.edu/taro/tslac/50043/tsl-50043.html>.
- 39 Ibid.
- 40 Ernest E. Bruce et al., *Blue Ribbon Panel on Dental Sedation/Anesthesia Safety*, Texas State Board of Dental Examiners, 2017.

ISSUE 2

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

Background

The Texas Commission on Law Enforcement (TCOLE) licenses and regulates peace officers, school marshals, county jailers, and telecommunications personnel, such as dispatchers and 9-1-1 operators. The commission has about 140,000 active licensees, regulates about 2,800 law enforcement agencies (LEAs), and contracts with about 300 training providers statewide. TCOLE receives complaints against licensees, conducts investigations, and takes disciplinary action against licensees convicted of certain crimes and for violations of training standards.

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the commission's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

Findings

Nonstandard licensure requirements create barriers for applicants and reduce the commission's effectiveness.

- **Insufficient information about criminal history.** To help protect the public, licensing agencies commonly conduct criminal background checks using the Department of Public Safety's (DPS) fingerprint system, which accurately identifies the individual, uncovers criminal history on applicants and licensees nationwide, and provides automatic criminal history updates or "rap backs." Statute requires law enforcement agencies to order a criminal history background check for all potential employees regulated by TCOLE, which must be kept on file and readily accessible to TCOLE inspectors during routine audits.¹ When a TCOLE licensee is arrested, charged, or indicted, TCOLE rule requires the licensee, their employing agency, and the arresting agency to report the offense to TCOLE. However, reporting this information may be delayed or go unreported entirely. This process risks the state allowing someone to maintain a license with an unreported disqualifying offense. In the last three fiscal years, TCOLE found criminal history deficiencies in nearly 13 percent of its LEA audits, including the failure to correctly order criminal history checks on licensees, allowing potentially unsafe individuals to be employed in communities, jails, and schools.

In the last three fiscal years, TCOLE found criminal history deficiencies in nearly 13% of its LEA audits.

Additionally, the ability to receive ongoing state and federal rap backs on licensees is critical to a regulatory agency, as it provides timely information about criminal activity after licensure. However, due to misunderstanding of what was possible through the DPS fingerprint system, which began providing rap backs in 2015, TCOLE has only been subscribed to receive rap backs on its employees and a small subset of trainees, not all licensees.

- **Subjective qualifications for licensure.** Qualifications for licensure should not subjectively restrict entry into practice. Currently, statute authorizes TCOLE to establish minimum moral standards for licensure as an officer, jailer, or telecommunicator.² While of course Texas wants licensees to have good character, the phrase “moral standards” is subjective and may be determined inconsistently. Many LEAs adopt their own ethical conduct standards for their employees even though no such minimum standard is required for licensees statewide. Removing the statutory authority for TCOLE to establish minimum moral standards would align with the commission’s current practice of objectively reviewing an applicant’s criminal history and determining whether to deny a license on the basis of objective standards relevant to the license.

TCOLE lacks standard enforcement authority and processes necessary to protect the public.

- **Limited complainant confidentiality.** To the extent possible, licensing agencies should protect the identity of individuals who file jurisdictional complaints. TCOLE’s jurisdiction is largely limited to criminal activity and violations of licensing and training requirements. In fiscal year 2021, about one-third of the complaints TCOLE received were dismissed as non-jurisdictional. When TCOLE receives a records request about an open complaint investigation, the commission attempts to keep the complainant’s identity confidential to prevent retaliation or reluctance to file legitimate complaints, which a Sunset survey of TCOLE licensees found was a concern for about one-third of respondents. However, TCOLE has faced legal challenges to its authority to maintain complainant confidentiality during an investigation. While the identity of the complainant may be revealed as the investigation proceeds to a hearing, agencies should be enabled to do their best to protect the identity of complainants for as long as possible to reduce any reluctance to file complaints for fear of retaliation.
- **Lack of express authority to issue limited administrative subpoenas.** TCOLE’s statute authorizes the commission to require certain licensing documentation from LEAs.³ When a chief administrator of an LEA refuses to comply with a request for required licensing documentation from TCOLE, the commission has the authority to temporarily suspend the chief administrator’s license.⁴ However, the commission does not use this authority in practice. Instead, TCOLE relies on subpoenas, issuing two in the last three fiscal years to LEAs, despite lacking explicit statutory subpoena authority.⁵

About one-third of surveyed licensees reported fear of retaliation for filing a complaint.

Additionally, the content of TCOLE’s subpoenas has, in some cases, extended beyond the information to which the commission is clearly entitled, such as appointment forms and criminal history information. For example, in November 2019 TCOLE subpoenaed video footage of a DPS polygraph interview of a licensee, which is employment information the commission is not clearly entitled to review. Many occupational licensing agencies in Texas, such as the Texas Medical Board, State Bar of Texas, and Texas Department of Licensing and Regulation, have statutory authority to subpoena information to which they are entitled, helping prevent delays in their investigations.⁶ Clearly defined administrative subpoena authority would define appropriate use and ensure TCOLE can investigate licensing matters efficiently and expediently.

- **Insufficient authority to ensure licensees remain fit for duty.** Statute currently requires a psychological and physical examination as a prerequisite to obtaining any TCOLE license, after a licensee has had a break in employment of more than 180 days, and every two years for school marshals to renew their licenses.⁷ TCOLE rule authorizes law enforcement agencies’ chief administrators to order a “fit-for-duty review” of a licensee if they suspect the individual may no longer be able to perform the job safely and effectively.⁸ However, TCOLE cannot request LEAs to conduct such a review when TCOLE suspects it may be warranted. Further, when a licensee refuses to participate in an LEA’s fit-for-duty examination, does not pass the examination, or does not complete treatment, the LEA is not currently required to notify TCOLE. While licensees found to be unfit can be terminated by their employers, they retain an active statewide license from TCOLE and can be hired at another LEA, where the chief administrator may not know about the failed or refused examination.

Additionally, TCOLE lacks clear authority to suspend a licensee who is found to be impaired or refuses to participate in a fit-for-duty examination.⁹ Law enforcement professionals are at high risk for burnout, substance abuse, and other mental health conditions that could impair their judgment or ability to perform their job functions safely.¹⁰ Since these conditions can arise at any point during an individual’s career, TCOLE should have a mechanism to encourage an examination when there is cause for concern or when it receives notice of a failed fit-for-duty examination of a licensee from an LEA. TCOLE should also have authority to take appropriate action to protect the licensee and the public while affording due process and keeping the results and identity of the examined individual confidential.

- **Unclear temporary suspension procedures.** Agencies should have the authority to temporarily suspend a license without notice in situations where imminent harm may result if an activity is not stopped immediately. Temporary suspension allows an agency to quickly address a serious situation, but the process is also subject to subsequent hearings designed to ensure due process. The State Office of Administrative Hearings (SOAH) upheld a temporary suspension TCOLE issued in December 2021, affirming the commission does have this authority.¹¹ However, neither the suspension

Many occupational licensing agencies have statutory subpoena authority.

Licensees found to be unfit can be terminated by their LEA but they retain their TCOLE license.

authority nor the due process owed to a licensee is explicit in statute. Proceedings following a temporary suspension can last several months, potentially leaving the licensee out of work for an extended period. A licensee should be guaranteed expeditious due process in cases of temporary suspension.

Sunset Staff Recommendations

Change in Statute

2.1 Remove a subjective qualification for licensure from statute.

This recommendation would remove outdated statutory language authorizing the commission to establish “moral standards” for licensure, which is outdated, vague, and subjective.¹² TCOLE would continue to review an applicant’s criminal history to determine eligibility for licensure, certification, registration, or approval. LEAs would continue to have the authority to set their own ethical conduct standards for employees.

2.2 Clearly authorize TCOLE to maintain confidentiality of complainants when possible.

This recommendation would authorize TCOLE to withhold the identity of individuals who make jurisdictional complaints to the extent possible, until an investigation proceeds to a hearing, during which the accused has the right to confront the complainant. TCOLE would continue to protect the identity of testifying complainants, while still ensuring accused licensees have access to all necessary information to fully respond to complaints. Protecting complainants’ identities reduces the fear of retaliation that could otherwise stifle legitimate complaints and protects LEAs from accusations of retribution.

2.3 Clearly define TCOLE’s authority to issue administrative subpoenas.

This recommendation would clarify in statute that TCOLE would be authorized to issue administrative subpoenas for the limited purpose of obtaining licensing records to which it is already entitled by statute, subject to judicial review.¹³ This recommendation would limit TCOLE’s ability to administratively request information and materials to which the commission is not legally entitled, while ensuring TCOLE has access to information needed to effectively investigate licensing matters and make appropriate decisions on possible enforcement actions.

2.4 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.

This recommendation would require TCOLE to establish and maintain a system for LEA chief administrators to report a licensee’s refusal to submit to a fit-for-duty examination or a failed examination. However, LEAs would be exempt from reporting a failed examination to TCOLE as long as the licensee submits to and completes treatment. In those circumstances, agency heads could continue to employ a licensee who fails an examination in an administrative role while he or she undergoes treatment and until the licensee can pass an examination and return to active duty. An LEA would not be required to report examinations in which the licensee was found to be fit for duty.

Under this recommendation, TCOLE would also be authorized to request an LEA to order a psychological or physical fit-for-duty examination if TCOLE suspects a licensee of being impaired. The blue ribbon panel discussed in Issue 1 would be directed to recommend specific conditions for when a request for examination would be justified. Finally, TCOLE would be authorized to suspend a licensee who fails an examination, or who refuses to submit to an examination.¹⁴

Suspended licensees would have the right to appeal TCOLE's action to SOAH. As part of this recommendation, the specific findings of an examination would be confidential, including in any future licensure decisions. Any resulting orders based on information from an examination could not disclose the underlying impairment, but would instead refer only to the statutory basis for TCOLE's action.

2.5 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.

This recommendation would make explicit in statute TCOLE's authority to temporarily suspend a license in cases of imminent threat to public health, safety, or welfare, as defined in rule, and clarify due process requirements, including a timeline for these processes.¹⁵ Statute would require TCOLE to schedule a hearing on the temporary suspension at the State Office of Administrative Hearings within 10 days of issuing the suspension order.

Management Action

2.6 Direct TCOLE to work with DPS to subscribe to rap backs on fingerprint-based criminal background checks for all licensure applicants and licensees.

This recommendation would direct TCOLE to work with DPS to ensure all its active licensees have fingerprint-based criminal history checks that enable TCOLE and the licensee's employing agency to subscribe to rap backs. All licensees fingerprinted prior to 2015, when the ability to subscribe to rap backs became possible through the DPS system, would be required to renew their fingerprints at one of DPS' 141 fingerprinting locations statewide. TCOLE would also work with DPS to confirm that all licensees fingerprinted before January 2018, when subscribing to rap backs became automatic, are in fact subscribed. To ensure compliance, this recommendation would authorize the commission to administratively suspend a licensee for failure to obtain a background check. To provide ample time for compliance, this authority would become effective September 1, 2024.

Fiscal Implication

Overall, these recommendations would not have a significant fiscal impact to the state. Recommendation 2.6 to subscribe TCOLE to rap backs on all licensees' fingerprint-based background checks would not have a fiscal impact to the commission, but would require any individuals licensed on or before June 1, 2015, or the licensee's employing agency, to pay about \$40 for a new fingerprint background check through DPS. TCOLE would receive criminal history information and instant updates as new information becomes available, and could accommodate any related workload with current resources.

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- ¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1701.303, Texas Occupations Code.
- ² Section 1701.151(2), Texas Occupations Code.
- ³ Section 1701.162(a), Texas Occupations Code.
- ⁴ Sections 1701.153(c) and 1701.501, Texas Occupations Code.
- ⁵ Section 2001.089, Texas Government Code; 1 Texas Administrative Code, Part 7, Chapter 155, Subchapter F, Section 155.257 (2017) (State Office of Administrative Hearings, *Subpoenas and Commissions*).
- ⁶ Section 153.007, Texas Occupations Code (Texas Medical Board); Section 81.080, Texas Government Code (State Bar of Texas); and Section 51.3512, Texas Occupations Code (Texas Department of Licensing and Regulation).
- ⁷ Sections 1701.260(d), 1701.303(b), and 1701.306, Texas Occupations Code.
- ⁸ 37 Texas Administrative Code, Part 7, Chapter 211, Section 211.29(g) (2016) (Texas Commission on Law Enforcement, *Responsibilities of Agency Chief Administrators*).
- ⁹ Section 1701.306, Texas Occupations Code.
- ¹⁰ National Alliance on Mental Health, “Law Enforcement,” accessed July 28, 2020, <https://www.nami.org/Advocacy/Crisis-Intervention/Law-Enforcement>.
- ¹¹ State Office of Administrative Hearings, *Texas Commission on Law Enforcement vs. Curtis Traylor-Harris*, Docket No. 407-22-1198 (March 21, 2022) (proposal for decision).
- ¹² Section 1701.151(2), Texas Occupations Code.
- ¹³ Section 1701.162, Texas Occupations Code.
- ¹⁴ Section 1701.306, Texas Occupations Code.
- ¹⁵ 37 T.A.C., Part 7, Chapter 223, Section 223.15 (2017) (Texas Commission on Law Enforcement, *License Suspension*).

ISSUE 3

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

Background

Over the years, Sunset reviews have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified changes needed to conform the agency's statutes to standards Sunset generally applies to all state agencies, address the need for the commission's required report, update statute to reflect the state's person-first respectful language initiative, and authorize the commission to establish advisory committees.

- **Sunset across-the-board provisions (ATBs).** The Sunset Commission has developed a set of standard recommendations it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These ATBs reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.
- **Reporting requirements.** The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.¹ The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, or posting requirements.
- **Person-first respectful language.** Statute requires Sunset to consider and recommend, as appropriate, statutory revisions in accordance with the person-first respectful language outlined in general law.² The stated intent of the law is to try to affect society's attitudes toward people with disabilities by changing the way the language refers to them. Sunset only changes language that occurs in chapters of law that are opened by the Sunset Commission's recommendations.
- **Advisory committees.** Under the Sunset Act, an agency's advisory committees are abolished on the same day as the agency unless expressly continued by law, but continuing the agency does not automatically continue its advisory committees by extension.³ Additionally, general law establishes that a statutory advisory committee expires four years after the date it was established unless either (1) statute exempts the advisory committee from that provision, or (2) the agency sets a later date for expiration in rule.⁴ Agencies may also have authority to create advisory committees in rule, which may or may not be subject to the same four-year limitation. As a result, Sunset has to determine whether an advisory committee should continue.

Findings

The commission's statute does not reflect standard language typically applied across the board during Sunset reviews.

TCOLE's governing law does not currently require board training on key topics.

TCOLE's statute contains standard language requiring commission members to receive training and information necessary to properly discharge their duties.⁵ However, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the commission's rulemaking authority. Statute also does not require that the agency create a training manual for all commission members or specify that commission members must attest to receiving and reviewing the training manual annually.

The commission's sole statutory reporting requirement continues to be needed.

Statute requires TCOLE compile an annual report detailing the grant-funded expenditures for body-worn camera equipment, as well as complaint and use of force information.⁶ Law enforcement agencies that receive grants from the governor's office for body-worn cameras must report that information to TCOLE for three years after receiving the grant. TCOLE compiles these agency reports and submits them to the Office of the Governor and the Legislature for analysis. Sunset staff found this report includes useful information about the impact of body-worn camera programs in the communities where implemented and the report should be continued.

The commission's statute does not use appropriate language when referring to persons with disabilities.

The governing statute for TCOLE contains a term that is not consistent with the person-first respectful language initiative. The commission's Sunset bill should revise the statute to use person-first respectful language as needed.

TCOLE uses informal, ad hoc working groups to provide expertise in policy development.

The commission lacks the authority to create advisory committees in rule.

The commission does not have any statutory advisory committees or the authority to appoint advisory committees, except the standard authority every agency has to appoint an advisory committee to provide input about contemplated rulemaking.⁷

Given the diverse group of stakeholders TCOLE impacts, the commission would benefit from statutory authority to formally establish advisory committees in rule. TCOLE currently uses informal, ad hoc working groups to provide expertise in policy development and rulemaking. These working groups are primarily composed of members from organizations with a preexisting relationship with TCOLE, often excluding many small and rural agencies from participating. Stakeholders have indicated this approach has resulted in policies that do not

always reflect current practices and the wide range of environments in which law enforcement works. Formal advisory committees would provide valuable input and insights, increasing inclusiveness and transparency in the commission's rulemaking and policy development processes.

Sunset Staff Recommendations

Change in Statute

3.1 Update the standard across-the-board requirement related to commission member training.

This recommendation would require TCOLE to develop a training manual that each commission member attests to receiving annually, and require existing commission member training to include information about the scope of and limitations on the commission's rulemaking authority; the laws governing TCOLE's operations; and requirements of other laws applicable to members of a state policymaking body in performing their duties. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

3.2 Update the commission's statute to reflect the requirements of the person-first respectful language initiative.

This recommendation would direct the Texas Legislative Council to revise TCOLE's governing statute to conform to the person-first respectful language requirements found in Chapter 392, Texas Government Code.

3.3 Authorize the commission to establish advisory committees in rule.

This recommendation would authorize the commission to establish advisory committees, subject to the requirements of Chapter 2110 of the Texas Government Code, to provide expertise for rulemaking, policy development, and for other purposes as needed. The commission should consider establishing advisory committees in areas where the commission and staff lack expertise, such as mental health, jailer licensing, and telecommunicator licensing. The commission should also consider establishing advisory committees in areas of great public concern, such as modernizing law enforcement training. The commission should adopt rules regarding each advisory committee, including:

- Purpose, role, goals, and duration
- Appointment procedures, composition, terms, and quorum requirements
- Membership qualifications, such as experience, representation of various industry segments, or geographic location
- Conflict-of-interest policies
- Compliance with the requirements of the Open Meetings Act

Fiscal Implication

These recommendations would not have a fiscal impact to the state, as they relate to basic management responsibilities and could be accomplished within existing resources.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

² Section 325.0123, Texas Government Code.

³ Section 325.013, Texas Government Code.

⁴ Section 2110.008, Texas Government Code.

⁵ Section 1701.059, Texas Occupations Code.

⁶ Section 1701.653, Texas Occupations Code.

⁷ Section 2001.031(b), Texas Government Code.

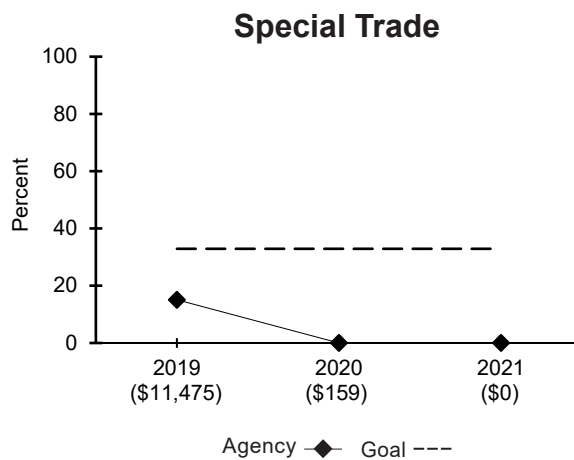
APPENDIX A

Historically Underutilized Businesses Statistics, FYs 2019-21

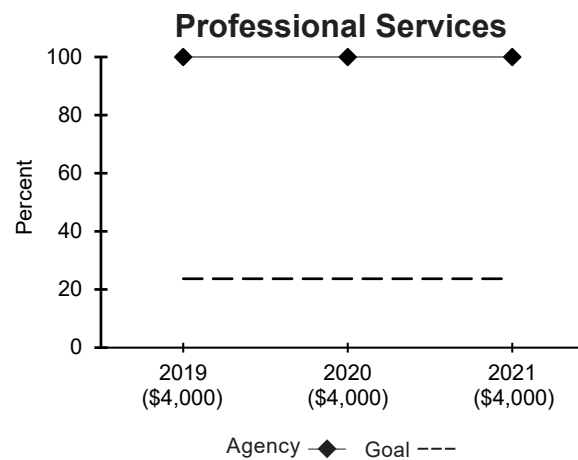
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies’ compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the Texas Commission on Law Enforcement’s (TCOLE) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller’s office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from fiscal years 2019-21. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

TCOLE has limited contract spending overall and has no spending in the heavy construction or building construction categories. However, the agency met or exceeded its goals for HUB spending consistently over the last three fiscal years in the professional services and commodities categories.

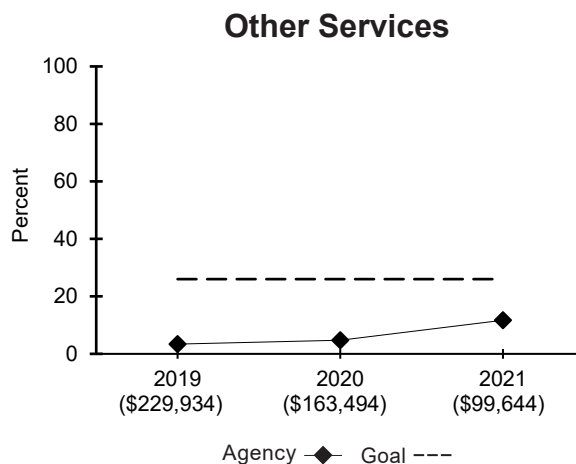


The agency failed to meet the state goal for HUB spending in the special trade category in fiscal years 2019 and 2020 and had no expenditures in this category in fiscal year 2021.

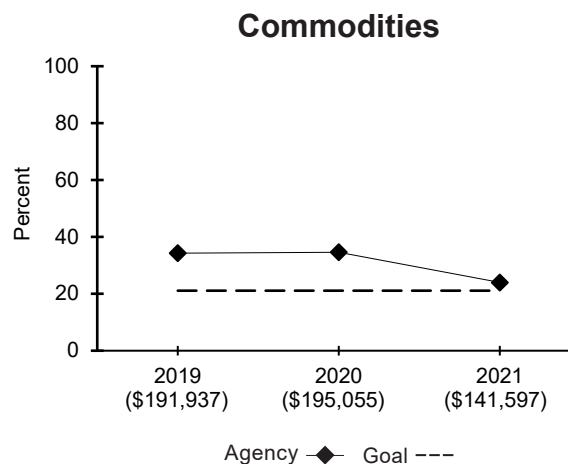


The agency exceeded the state goal for HUB spending in the professional services category in each of the last three fiscal years.

Appendix A



The agency failed to meet the state goal for HUB spending for other services in each of the last three fiscal years.



The agency met or exceeded the state goal for HUB spending for commodities in each of the last three fiscal years.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

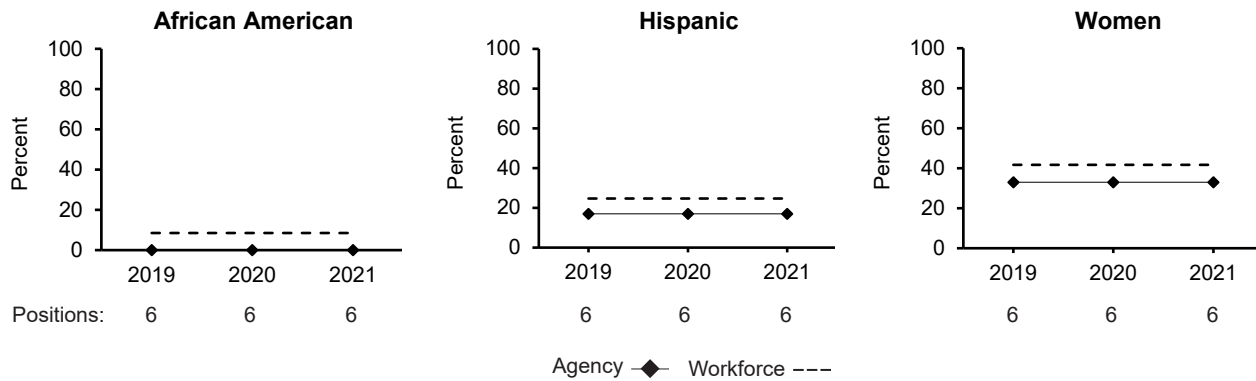
² Chapter 2161, Texas Government Code.

APPENDIX B

Equal Employment Opportunity Statistics, FYs 2019-21

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and women in all applicable categories by the Texas Commission on Law Enforcement (TCOLE).¹The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.²In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and women in each job category.³ These percentages provide a yardstick for measuring agencies’ performance in employing persons in each of these groups. The diamond lines represent the agency’s actual employment percentages in each job category from fiscal years 2019-21. TCOLE has had difficulty meeting the civilian workforce percentages, particularly in leadership and technical positions. The agency had no employees in the protective services, service/maintenance, or skilled craft categories.

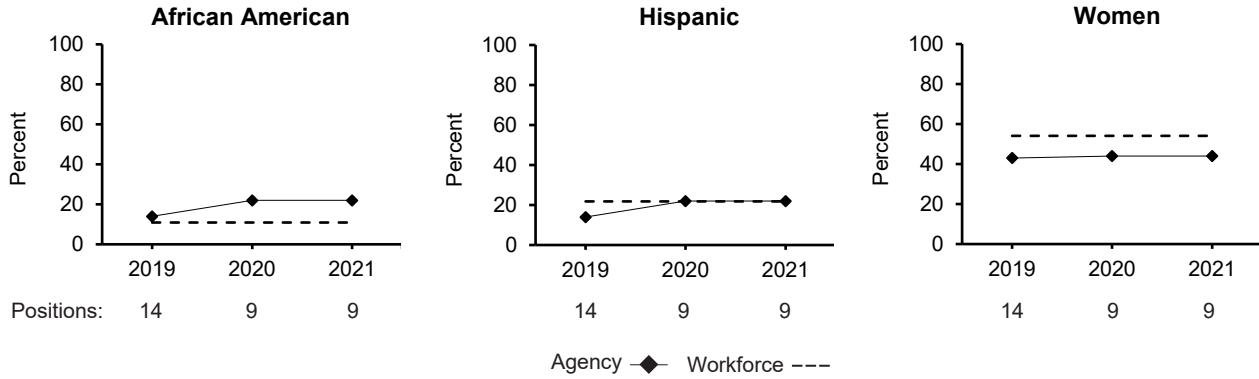
Administration



The agency had no African American employees in the administration category, and fell slightly below the statewide percentages for Hispanics and women in each of the last three fiscal years.

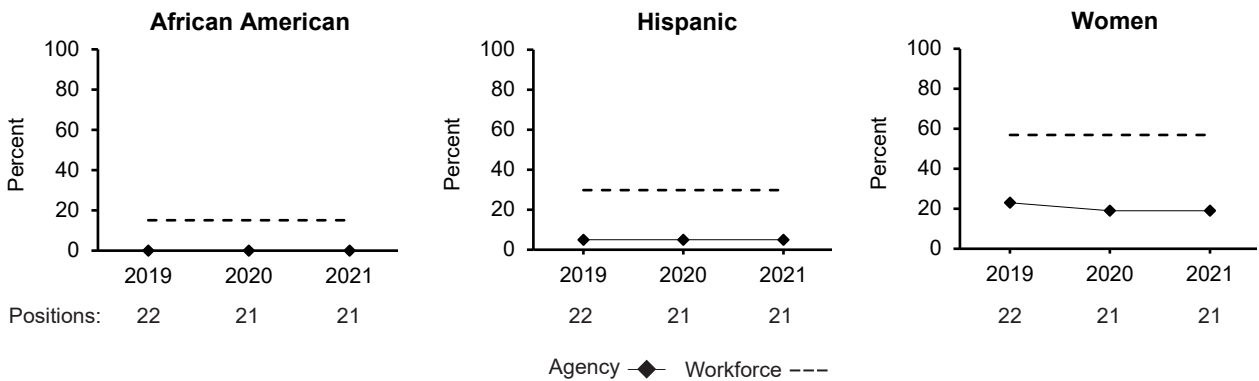
Appendix B

Professional



The agency met or exceeded the statewide percentage for African Americans and met the statewide percentage for Hispanics in each of the last three fiscal years except in 2017, but fell below the statewide percentage for women in all three fiscal years.

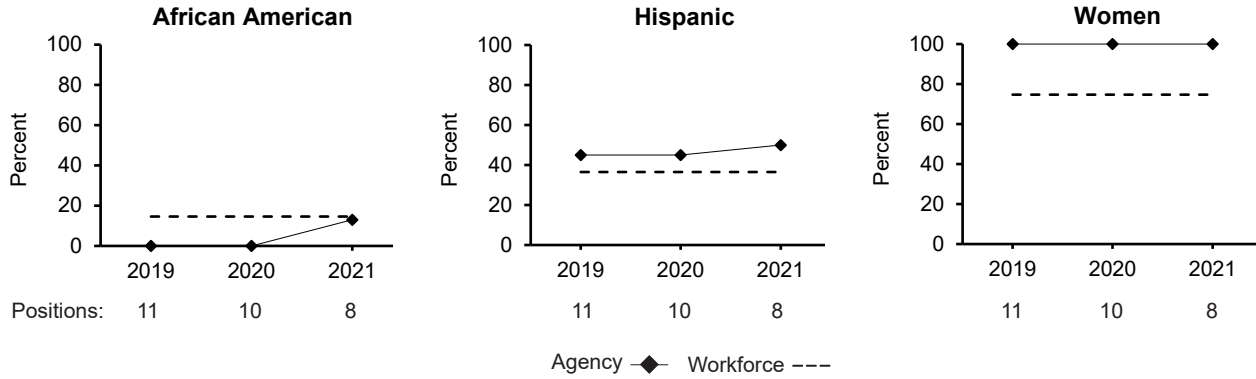
Technical



The agency had no African American employees in the technical category and fell below the statewide percentages for Hispanics and women in each of the last three fiscal years.

Appendix B

Administrative Support



The agency met the statewide percentage for African Americans in fiscal year 2021, but had no African Americans in this category in the previous two fiscal years. The agency exceeded the statewide percentages for Hispanics and women in each of the last three fiscal years.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

² Section 21.501, Texas Labor Code.

³ Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX C | Basic Licensure Course Requirements

Peace Officer Course Requirements¹

Topic	Hours
A. Professional Police Practices	56
TCOLE Rules Overview	4
Racial Profiling	4
Multiculturalism and Human Relations	8
Professionalism and Ethics	12
Professional Policing	12
Fitness, Wellness, and Stress Management	16
B. Constitutional Law, Criminal Law, and Criminal Justice System	125
Consular Notification	1
Asset Forfeiture	4
Identity Crimes	4
Civil Process	4
Code of Criminal Procedure	12*
U.S./Texas Constitution and Bill of Rights	10
Arrest, Search, and Seizure	40
Penal Code	50
C. Illegal Substances and Special Regulations	16
Texas Alcoholic Beverage Code	4
Health and Safety Code - Controlled Substance Act	12*
D. Family, Children, and Victims of Crime	35
Child Alert Checklist	1
Sexual Assault and Family Violence	12**
Missing and Exploited Children	8*
Human Trafficking	4
Victims of Crime	10
E. Traffic Regulation	98
Intoxicated Driver/Standardized Field Sobriety Testing	24
Traffic Code/Crash Investigation	74
F. Communications/Language	48
Written Communications	16
Verbal Communication/Public Interaction	16

Appendix C

Topic	Hours
Spanish	16
G. Use of Force	36
De-escalation Strategies	8
Force Options Theory	28*
H. Special Populations	42
Traumatic Brain Injury	2
Crisis Intervention Training	40
I. Arrest Procedures	40
Arrest and Control	40
J. Investigations	50
Juvenile Offenders	10
Criminal Investigation	40
K. Vehicle Operations	32
Professional Police Driving	32
L. Patrol Operation	72
Civilian Interaction Training	2
Interacting with Deaf and Hard of Hearing	4
Canine Encounters	4
Radio Communications/Amber-Silver Alerts/Texas Crime Information Center-Texas Law Enforcement Telecommunications System	16
Patrol Skills/Traffic Stops	46
M. Medical	16
Emergency Medical Assistance	16
N. Weapons	48
Firearms	48
O. All Hazards Training	4
HAZMAT/Incident Command Systems	4
P. End of Course Review	2
Total Hours	720

In 2021, the Legislature increased the length of the Basic Peace Officer Course from 696 hours to 720 hours.² TCOLE increased the hours allocated to certain topics, as noted, to meet this requirement.

* Four hours added in 2022 update.

** Eight hours added in 2022 update.

Appendix C

County Jailer Course Requirements³

Topic	Hours
A. Introduction	1
B. TCOLE and Academy Rules Overview	1
C. Facility Oversight and Concepts	2
D. Human Relations	12
Ethics	4
Sexual Harassment	1
Cultural Awareness and Civil Rights	2
Human Relations	2
Officer Stress	3
E. Mental Health, De-escalation Techniques, and Suicide	24
Mental Health	8
De-escalation Techniques	8
Suicide (Intermediate Course)	8
F. Intake Procedure	11
Admissions	3
Identification Procedures	2
Intake Procedures	2
Inventory	1
Money Accounts	1
Inmate Supplies	1
Inmate Orientation	1
G. Classification	9
Disruptive Groups	3
Classification	6
H. Inmate Services	3
Mandated Activities	1
Food Services	.5
Visitation	.5
Correspondence	1
I. Inmate Health Care	4
Health Records and Services	1
Communicable Diseases	3

Appendix C

Topic	Hours
J. Facility Security Protocols	14
Facility Security and Headcounts	2
Searches (Inmate and Contraband)	3
Emergency Procedures	3
Hostage	2
Uncooperative Violent Inmates	1
Transportation	3
K. Legal Responsibilities	13
Legal Aspects of Force	4
Inmate Rights	2
Grievances	1
Inmate Discipline	1
Liability	2
Inmate Con Games	3
L. Defensive Tactics	16
M. Documentation Process	9
Investigations	1
Report Writing	4
Courtroom Demeanor and Testimony	1
Inmate Release	3
N. End of Course Review	1
Total	120

Appendix C

Telecommunicator Course Requirements⁴

Topic	Hours
A. Roles and Responsibilities	4
<ul style="list-style-type: none"> • TCOLE rules and regulations • A telecommunicator's role and responsibilities as a member of public safety • Quality Assurance (QA), Quality Control (QC), Quality Improvement (QI), and performance standards used to recognize excellence, identify areas needing improvement, and ensure performance measures are met 	
B. Communication Resources and Confidentiality	4
<ul style="list-style-type: none"> • Resources for the telecommunicator in a public safety answering point • The importance of maintaining the confidentiality of public safety information 	
C. Emergency Communications Technology	8
<ul style="list-style-type: none"> • The history of 9-1-1 administration, legislation, and system technology • Legislation, systems, and technology providing an equal level of service to citizens who are deaf, hard of hearing, or speech impaired • Systems and functionality used in public safety emergency communications Computer-Aided Dispatch (CAD) systems • Systems and technology used in public safety emergency communications maps and recorders • Emergency communications radio technology systems used in public safety emergency communications 	
D. Basic Call Processing Techniques	8
<ul style="list-style-type: none"> • Applying effective basic communication skills • Applying basic call-taking skills (includes four hours of statutorily required telecommunicator CPR training) • Classifying calls for service 	
E. Basic Radio Communications	4
<ul style="list-style-type: none"> • Protocol involving radio communication techniques 	
F. Legal and Liability Concepts	4
<ul style="list-style-type: none"> • Liability and legal issues involving emergency telecommunicators and their agencies 	
G. Stress, Health, and Awareness	4
<ul style="list-style-type: none"> • Health and wellness topics related to telecommunicator stress management and critical incident stress • Ways to relieve stress and improve the health of telecommunicators 	
H. Ethics	4
<ul style="list-style-type: none"> • Basic concepts of ethical principles 	
I. Cultural Diversity	8

Appendix C

Topic	Hours
J. Crisis Communications	32
<ul style="list-style-type: none"> • Techniques used in dealing with persons with mental illness • Techniques used when dealing with suicidal persons • Processing techniques for family violence calls for service • Recognize calls taking techniques for stalking incidents • Processing techniques for sexual assault calls for service • Processing techniques for human trafficking calls for service • Processing techniques for hostage and barricaded persons calls for service • Process for handling calls involving explosive devices (bomb threats), suspicious packages, terrorism, and other emergency calls for service • Emergency management’s role as it relates to a telecommunicator’s responsibilities • Call recognition, handling, and classification procedures for calls involving missing and exploited children 	
Total Hours	80

¹ Texas Commission on Law Enforcement (TCOLE), *Basic Peace officers Course #1000720*, accessed online July 25, 2022, <https://www.tcole.texas.gov/sites/default/files/CourseCMU/BPOC%20720.zip>.

² Chapter 722 (HB 3712), Acts of the 87th Texas Legislature, Regular Session, 2021, General and Special Laws of Texas.

³ TCOLE, *Basic County Corrections Course*, accessed online July 25, 2022, https://www.tcole.texas.gov/sites/default/files/CourseCMU/Jail%20Course%20July%2024%2C%202019_0.zip.

⁴ TCOLE, *Basic Telecommunicator License Course*, accessed online July 25, 2022, https://www.tcole.texas.gov/sites/default/files/CourseCMU/1080%20Telecommunicator%202020_0.zip.

APPENDIX D

Mandatory Continuing Education

Licensee or Job Function	Training Requirement	Deadline/Timeline
Standard continuing education		
All peace officers	40 hours (including Legislative Update course)	Every two years
Peace officers with only basic certification	Mental Health Crisis Intervention	Every four years
	De-escalation	
	Special Investigative Topics	
	Cultural Diversity	
County jailers	Cultural Diversity	
Telecommunicators	20 hours (including four hours of telecommunicator CPR and 16 hours of federally required Teletypewriters (TTY) and Telecommunications Device for the Deaf (TDD) training)	Every two years
Assignment-specific training (pre-requisite)		
Peace officers who will wear body worn cameras	Body Worn Cameras course	Before performing the function
Peace officers carrying epinephrine auto-injectors (epi-pens)	Epinephrine auto-injector training	
Peace officers who will perform eyewitness identification	Eyewitness identification training	
University or college peace officer	Trauma-informed investigation training	Before performing the function for new hires; No deadline specified for existing officers
County jailers carrying a firearm	Jail firearms course; Jailer firearm certification	Before performing the function
Assignment-specific training (by date)		
New police supervisors	Initial training for assignment; Assignment-specific and civil process courses	Within two years after appointment Every two years
New police chiefs	Initial training for assignment	Within two years after appointment
New constables	Initial training for assignment; Assignment-specific courses	Within two years after appointment Every four years
Deputy constables	Civil process course	Every four years
Courtroom security officers	Courtroom security course	Within one year of appointment
School-based law enforcement officers	Proficiency certificate	Within 180 days of the officer's commission or placement in the district or campus of the district
Jail administrators	Initial training for assignment	Within 180 days of assignment

Appendix D

Licensee or Job Function	Training Requirement	Deadline/Timeline	
Miscellaneous continuing education			
Peace officers	Human Trafficking	1/1/2011	Within two years of licensure if on or after the specified date and not taken in the Basic Peace Officer course
	Interacting with Drivers who are Deaf/Hard of Hearing	3/1/2011	
	Crisis Intervention Training	4/1/2011	
	Canine Encounters	1/1/2016	
	Civilian Interaction Training	1/1/2018	
County jailers	Mental Health	By 8/31/2021 if not taken in the Basic County Corrections course	

APPENDIX E

F-5 Process

- Separation of employment.** A local law enforcement agency (LEA) must file an F-5 form with the Texas Commission on Law Enforcement (TCOLE) whenever a licensee ceases employment at that agency.¹ On the F-5 form, the LEA must select a discharge category that describes the nature of the separation, as noted in the chart. By policy, TCOLE considers the discharge designation to be a subjective rating by the LEA and defers to the LEA's discretion in determining the provable facts, applying the F-5 standards, and choosing an appropriate designation.² About 3 percent of the 18,000 F-5 forms issued annually from 2017 through 2021 contain a dishonorable discharge.

F-5 Discharge Categories

Honorable Discharge
Licensee is in good standing and separation is not because of pending or final disciplinary actions or a documented performance problem.
General Discharge
Separation related to: <ul style="list-style-type: none"> a disciplinary investigation of conduct not included in definition of dishonorable discharge, or a documented performance problem, not a reduction in workforce or at-will employment decision.
Dishonorable Discharge
Terminated or resigned in lieu of termination: <ul style="list-style-type: none"> in relation to allegations of criminal misconduct, or for insubordination or untruthfulness.

- Future employment.** TCOLE consolidates all of a licensee's F-5 forms into an overall report, called the F-5R. When an LEA considers hiring a licensee, the LEA is required to request the F-5R from TCOLE as part of the employment background check.³ A dishonorable discharge may flag questionable conduct for a potential employer. LEAs are also required to certify they have reviewed a potential new hire's employee personnel records at all previous employer LEAs.⁴
- F-5 appeal.** When an LEA files an F-5 form, the licensee has 30 days to file a petition with TCOLE to change a dishonorable or general discharge category.⁵ Although TCOLE is not considered a party to the F-5 appeal, it is responsible for referring the appeal to the State Office of Administrative Hearings (SOAH).⁶ At the SOAH hearing, the LEA's chief administrator carries the burden to prove the discharge category is proper, and failure to appear results in a default discharge upgrade for the licensee. Otherwise, the administrative law judge determines what misconduct occurred, if any, and whether to upgrade the discharge category. In fiscal year 2021, most appeals resulted in an upgrade to honorable discharge.
- Licensee discipline.** The F-5 form is an extension of the employment relationship between the LEA and the licensee. TCOLE cannot use the F-5 information as grounds for the suspension or revocation of a license.⁷ However, TCOLE will pursue revocation if SOAH upholds a second dishonorable discharge of a licensee.⁸

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1701.452, Texas Occupations Code.

² Texas Commission on Law Enforcement, “Technical Assistance Bulletin Regarding the categories of Discharge on F5 Separation Reports,” accessed online August 15, 2022, <https://www.tcole.texas.gov/sites/default/files/TAB/4%208%202022%20Final%20TAB-%20Category%20of%20Discharge%20F5%20Report.pdf>.

³ Section 1701.451, Texas Occupations Code.

⁴ Section 1701.451 (a)(3)(B)(i), Texas Occupations Code.

⁵ Section 1701.4525, Texas Occupations Code.

⁶ Ibid.

⁷ Section 1701.457, Texas Occupations Code.

⁸ Section 1701.4521, Texas Occupations Code.

APPENDIX F

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Staff Review Activities

During the limited scope review of the Texas Commission on Law Enforcement (TCOLE), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with TCOLE personnel; attended commission meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed commission documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to TCOLE:

- Observed TCOLE's training provider assessments.
- Attended a TCOLE School Safety demonstration.
- Conducted field visits to multiple law enforcement agencies.
- Conducted interviews with individual licensees.
- Conducted a survey of all current TCOLE licensees.

Sunset Staff Review of the *Texas Commission on Law Enforcement*

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