

From: [Elizabeth Jones](#)
To: [Janet Wood](#)
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Monday, December 14, 2020 7:59:17 AM

From: sunset@sunset.texas.gov On Behalf Of Texas Sunset Commission
Sent: Friday, December 11, 2020 6:45:55 PM (UTC-06:00) Central Time (US & Canada)
To: Sunset Advisory Commission
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS COMMISSION LAW ENFORCEMENT

First Name: John

Last Name: Ferrara

Title:

Organization you are affiliated with:

Email:

City: San Antonio

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

I read the report on TCOLE generated by the Texas Sunset Advisory Commission and I believe it to be a fair analysis to TCOLE's current standings; however, I also believe many of the items cited as unenforceable by TCOLE, is not totally conclusive.

Overall Oversight:

There are many laws and procedures which allow TCOLE to act. There are also overlapping agencies which have oversight of key functions; such as custodial practices involving prisoners. I believe TCOLE to need integrated activities amongst many of the oversight bodies of the State of Texas to be effective.

Reading though the Texas Administrative Code (TAC) and historical legislature, this appears to be the intent of the practice, but in application, seems to be missing. This may mean, there are not any real needs to increase legal authority of TCOLE, but to assure it is properly placed and answer questions of which oversight body in Texas is best suited for which review and how will the information be disseminated to the oversight body with the need to know and what will that body do with the information.

F-5 & Other Records:

To say TCOLE has no authority to enforce bad paperwork they receive seems to be a contradiction to the Texas Penal Code, Tampering with Government Record's statute. People are obligated to make sure the documents they submit for government use are proper. TCOLE has a legal reason for needing the information. Any information submitted to TCOLE which may be done intentionally, or knowingly false are matters of TCOLE review and concern.

Whether TCOLE performs this type of review, becomes the concern. The fact they may not have done it in the past, does not mean they do not ALREADY have the authority to do such. The concern may be addressed in other areas of the review submitted. If an Agency submits an F-5 to TCOLE and the Agency knows they are releasing the person for conduct matters; why is the Agency not obligated to ALREADY check the proper box or submit paperwork to TCOLE explaining WHY it was not checked? I believe that is already a legal obligation and there is already a process in place, but it does not happen.

The form already has the language on it, but it seems to not be used properly. This does not require a revamp of

process of the F-5, but it shows TCOLE has created a process and has not used it for the desired purpose. There may need to be more discussion on why the F-5 is unable to be enforced, within the confines of Texas Penal Code 37.10, Tampering with Government Records.

Background Investigations:

The concern I have seen, are subpar background investigations of top level executives of Law Enforcement Agencies. The concern is a trickle effect.

Does TCOLE really need to have full oversight of a Law Enforcement Agency? I do not believe so, but I do believe they need to conduct background investigations on all Top Level (Agency Administrators) themselves. Should those people pass a prescribed background and meet established standards, then the chances of an agency being unable to manage its people becomes less likely. The Federal Government uses Suitability Standards and some other items to assure proper character and qualifications. They also provide a tiered level of background investigations. The approach TCOLE takes, has recently created an actual requirement to be held, but does not set clear standards of acceptable conduct and how it can be mitigated. I believed TCOLE's "bread and butter," for proper licensing is within the background investigations component of the senior executives of each agency. I believe there would need to be some evolution of the concept and there are things to work out, but if TCOLE can improve the vetting process for local governments, TCOLE helps assure policing in Texas has a specific character level.

Data Warehouse:

I am not sure TCOLE needs to have more paperwork (TCIC/NCIC, Fingerprint Returns) from any other State Level Agency, but some kind of bridge network, repository may be most efficient for all State Oversight Agencies in Texas.

This may be something where a network is created by one or more of the State Level Universities and they become a data warehouse. This is not an uncommon practice in the government, but seems to be an issue within the State of Texas, as it relates to archaic practices. An example is already seen with the Personal Service Report (PSR) system of TCOLE. They already have a data set and the data they are using has not been aggregated to review those who were licensed before technology (1994ish) to see if they even met the proper standard of that time. This may lead into more effective Audit and Monitoring of TCOLE.

Oversight Program:

The lines do blend between administrative review and law enforcement review as it seems most key roles are sworn law enforcement officers. TCOLE may want to consider having a non-sworn oversight officer which can build and account for much of what was found in the report. Having an effective Compliance Program of TCOLE would go a long way with everything they do.

They would also be able to forecast future risks and attempt to mitigate them before they happen. This may be listed in the report as lack of public reporting, and various other items. I believe an effective Compliance Officer to be the biggest investment TCOLE can make within their program review. I would also venture to format it the way the Federal Government has regulated healthcare and the need for compliance in those roles; however, the qualifications of someone to perform that role may be less common.

Laws and Rules:

I believe there are plenty of laws on the books which are already enforceable by TCOLE. A rule, by law, is a law. The rules in the TAC are administrative laws of employment. TCOLE already has a method to enforce criminal and administrative laws. The Texas Abuse of Official Capacity law is the prime mode for criminal review and can use the rules because they are created by authority of a statute. Again, I believe someone needs to really do a review of what can legally be done, and not done, with a sound documentation of why or why not before any new laws are created.

The two biggest laws for TCOLE to enforce are Abuse of Official Capacity and Tampering with Government Records; those two laws align with almost every rule created in the TAC. I am confused on where the conversation occurred that TCOLE couldn't do certain things that the laws clearly allow. If the matter does not raise to being able to prove "intent," for the Abuse of Official Capacity charge then there is the administrative avenue, but the rules are laws by Texas Legislature.

Any Alternative or New Recommendations on This Agency:

Create a Compliance Officer (non-sworn) role to conduct audit and monitoring processes; which will report everything needed Review the legal language of what can really be done with rules (as laws), before creating any new laws Integrate state oversight bodies to efficiently provide data to one another Create a data warehouse for efficiency and brainstorm with all Texas Oversight Bodies as there may be overlap in needs.

Consider approving TCOLE to perform Background Investigations for Agency Administrators (and create a more in-depth suitability standard)

My Comment Will Be Made Public: I agree