

# EXECUTIVE SUMMARY OF SUNSET STAFF REPORT

## Texas Commission on Law Enforcement

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Texas' approach to law enforcement regulation no longer meets 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, the Texas Commission on Law Enforcement (TCOLE) sets minimum licensing and training standards for law enforcement personnel and enforces compliance with them. Meanwhile, local law enforcement agencies set their own standards of professional conduct and disciplinary policies, as well as additional training requirements for their employees. However, over the past 50 years, the world in which law enforcement personnel operate has changed significantly, becoming much more complex and demanding. Technology has increased the public's awareness of law enforcement activities, greatly increasing pressure for professionalism and external scrutiny of conduct. The bifurcated regulatory model from 1970 has not kept pace with these changes, and can no longer ensure the conduct, training, transparency, and accountability the public expects of law enforcement in 2020. The Sunset review found the state's regulatory approach has resulted in a fragmented, outdated system with poor accountability, lack of statewide standards, and inadequate training. And while Texas has a continuing need to regulate law enforcement, the state's current regulation is, by and large, toothless.

**The state's current regulation of law enforcement is, by and large, toothless.**

TCOLE has struggled to adapt to this changing environment, but many struggles are beyond its control. Instead, they stem from the state's bifurcated regulatory model, which has created a significant disparity between the public's expectations and TCOLE's actual authority. The public presumes TCOLE is a fully capable professional licensing and regulatory agency, similar to the Texas Medical Board or Texas Pharmacy Board, with broad authority to set high standards for individuals to receive and maintain a law enforcement license, and to hold these licensees fully accountable.

In reality, TCOLE has relatively limited authority to set or enforce anything but minimum licensure standards, which are outdated and insufficient. TCOLE has no role in setting or enforcing standards of professional conduct for law enforcement personnel, and only has authority to hold law enforcement licensees accountable for their conduct in cases of a criminal conviction or deferred adjudication. TCOLE also has no authority to enforce standards for law enforcement agencies, such as local sheriffs' offices. Additionally, within

its limited sphere of control, TCOLE faces resource constraints often seen in small agencies, requiring the commission to focus on immediate priorities rather than long-term strategic goals.

What Texans expect from TCOLE does not align with what the commission can accomplish, despite the staff's best efforts. Without addressing this fundamental misalignment, neither TCOLE nor the state as a whole can effectively license and regulate law enforcement personnel in Texas. However, addressing the state's approach to law enforcement regulation involves larger policy issues beyond the scope of Sunset and this review. Yet Sunset staff determined TCOLE can never be an effective agency without careful consideration of and significant changes to the regulation of law enforcement in Texas.

Particularly at this time in history, rather than attempting to repair TCOLE when it is the state's regulatory system that is fundamentally broken, Sunset staff 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. In light of this recommendation, Sunset staff focused its other recommendations on changes TCOLE could currently implement to improve its efficiency and effectiveness, regardless of future policy decisions. These recommendations include 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 following material highlights Sunset staff's key recommendations for the Texas Commission on Law Enforcement.

## Sunset Staff Issues and Recommendations

### ISSUE 1

#### Texas' Approach to Regulating Law Enforcement Is Ineffective.

While Texas has a continuing need to regulate law enforcement, the Sunset review of TCOLE found Texas' approach has resulted in a fragmented, outdated system with poor accountability, lack of statewide standards, and inadequate training. The state's regulatory model, bifurcated between state and local government, creates significant gaps that undermine the purpose of statewide licensure, and does not best ensure public safety or law enforcement accountability and transparency. 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 are outdated and ultimately 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 needed 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 2023.

## ISSUE 2

### The Commission Does Not Follow Best Contracting Practices for Its IT Services.

TCOLE's contracting procedures limit the commission's ability to effectively evaluate and manage its IT contracts. Sunset staff found TCOLE's contracts lack terms that would induce more efficient, effective performance. The commission also lacks adequate processes for assessing the risk and need to outsource agency operations and regular contract training that could have precluded many of the problems identified.

#### Key Recommendations

- Direct TCOLE to require regular training for all staff involved in the contracting process.
- Direct TCOLE to develop a formal contract development and solicitation process for all of its contracts.
- Direct TCOLE to include detailed, actionable performance incentives in its contracts.

## ISSUE 3

### 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. Licensure requirements for training providers are subjective, vague, and could create barriers for otherwise qualified applicants. TCOLE also lacks standard statutory direction, such as requirements to protect complainant confidentiality, and authority to issue administrative subpoenas. Additionally, statute delegates a key licensing responsibility — completion of criminal background checks — to the employers of the licensees, leaving TCOLE without ready access to important eligibility information. The commission also does not conduct risk-based audits, makes poor use of its data to guide decision making, and has not developed penalty matrixes to guide consistent disciplinary decisions. Aligning TCOLE's statutes and procedures with best practices would help streamline the agency's operations and improve its effectiveness to protect the public.

#### Key Recommendations

- Require TCOLE to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.
- Clearly authorize TCOLE to issue subpoenas for investigative records.
- Direct TCOLE to adopt rules to comply with the statutory requirement to establish a risk-based approach to audits.
- Direct TCOLE to develop a penalty matrix.

## ISSUE 4

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

This review identified changes needed to encourage more meaningful review of TCOLE's rules, 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.
- Direct the commission to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.

#### 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 \$4.2 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.