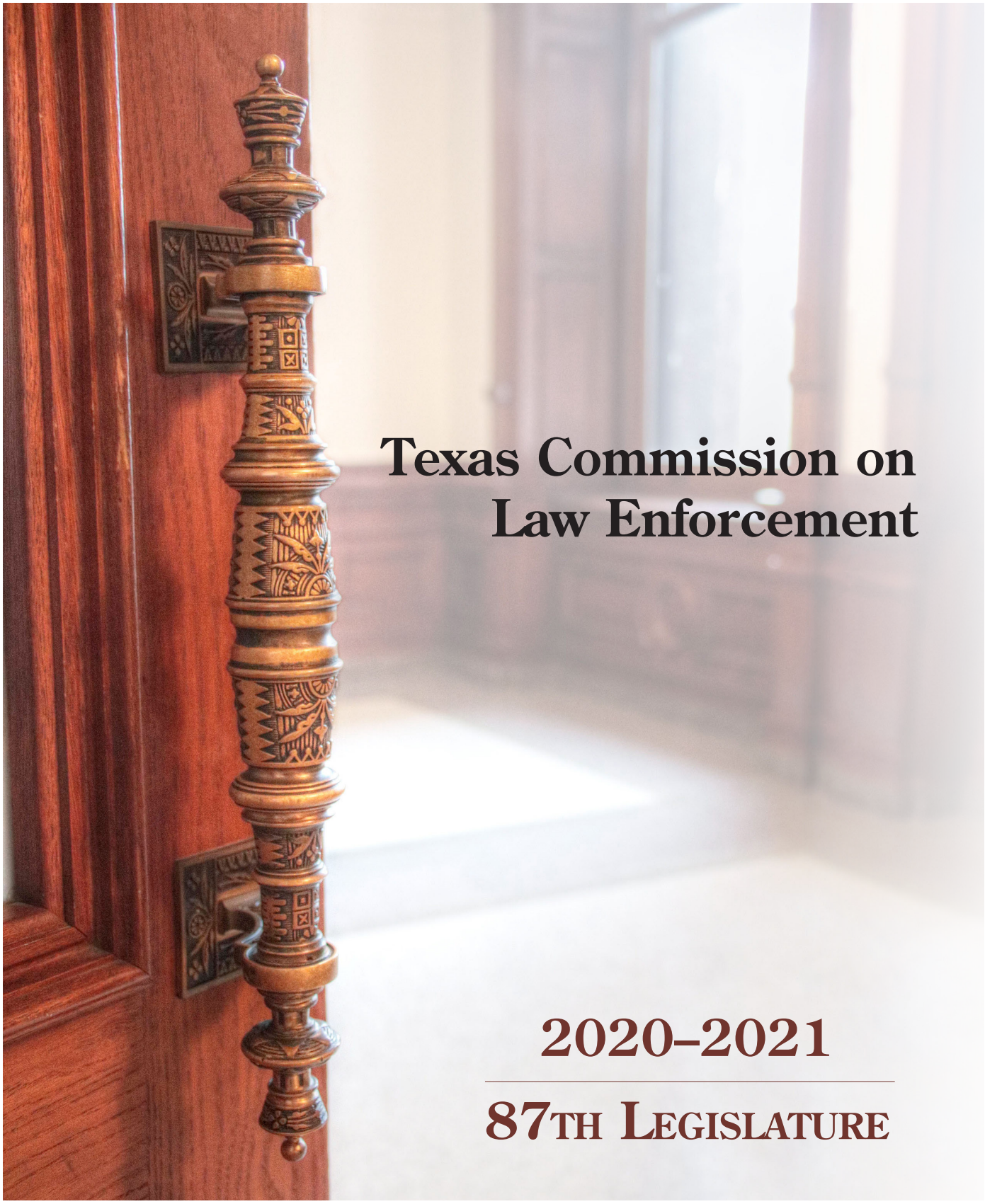
Sunset Advisory Commission

Staff Report with Commission Decisions



Texas Commission on Law Enforcement

2020–2021

87th Legislature

Sunset Advisory Commission

Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood

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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.

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.

CURRENT VERSION: 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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Sunset Commission Decisions

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Commission on Law Enforcement (TCOLE), as well as modifications and a new recommendation raised at the public hearing.

Texas has a bifurcated approach to law enforcement regulation. At the state level, TCOLE sets and enforces minimum licensing and training standards for law enforcement personnel while local law enforcement agencies set their own professional conduct standards and disciplinary policies, as well as additional training requirements. While Texas has a continuing need to regulate law enforcement, the Sunset Commission found the state's current regulation is, by and large, toothless. Texas' bifurcated approach has resulted in a fragmented, outdated system with poor accountability, lack of statewide standards, and inadequate training.

The public presumes TCOLE has full authority to set high standards for individuals to receive and maintain a law enforcement license, and to hold licensees fully accountable for their actions. In reality, TCOLE only has authority to set and enforce minimum licensure standards, and no authority to set or enforce standards of professional conduct except in the case of a licensee's criminal conviction or deferred adjudication. TCOLE also has no authority over law enforcement agencies.

These significant regulatory gaps cannot be addressed through changes to TCOLE's operations. Rather, it is the state's regulatory system that is fundamentally broken. As a result, the Sunset Commission recommends 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, including TCOLE's role in the system.

The Sunset Commission also recommends changes TCOLE could currently implement to improve its efficiency and effectiveness, regardless of future policy decisions. These recommendations include following certain contracting best practices to improve TCOLE's contracting processes, especially for IT. The commission also recommends aligning TCOLE's statutes and procedures with best practices for licensing and regulatory agencies. Finally, the commission recommends changes to encourage more meaningful review of TCOLE's rules, authorize the appointment of advisory committees, and conform TCOLE's statutes to standards Sunset generally applies to all state agencies.

Issue 1

Texas' Approach to Regulating Law Enforcement Is Ineffective.

Recommendation 1.1, Adopted as Modified — 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. The panel would focus on three key areas:

- Standards of professional conduct for licensees
- Licensee training and education requirements

- Accountability for 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 recommendations of policy; 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.

Additional information and details about the panel and its proposed duties can be found on pages 18 and 19 of this report.

Recommendation 1.2, Adopted — Continue the Texas Commission on Law Enforcement for two years.

Issue 2

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

Recommendation 2.1, Adopted — Direct TCOLE to require regular training for all staff involved in the contracting process. (Management action – nonstatutory)

Recommendation 2.2, Adopted — Direct TCOLE to develop a formal contract development and solicitation process for all of its contracts. (Management action – nonstatutory)

Recommendation 2.3, Adopted — Direct TCOLE to include detailed, actionable performance incentives in its contracts. (Management action – nonstatutory)

Issue 3

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

Recommendation 3.1, Adopted — Require TCOLE to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.

Recommendation 3.2, Adopted — Remove a subjective qualification for licensure from statute.

Recommendation 3.3, Adopted — Clearly authorize TCOLE to maintain confidentiality of complainants when possible.

Recommendation 3.4, Adopted — Clearly authorize TCOLE to issue subpoenas for investigative records.

Recommendation 3.5, Adopted as Modified — 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.

Recommendation 3.6, Adopted — Authorize TCOLE to temporarily suspend a license if it finds an imminent threat to public health, safety, or welfare.

Recommendation 3.7, Adopted — Direct TCOLE to remove subjective and anticompetitive requirements for contracted training providers. (Management action – nonstatutory)

Recommendation 3.8, Adopted — Direct TCOLE to develop an online complaint submission form. (Management action – nonstatutory)

Recommendation 3.9, Adopted — Direct TCOLE to develop a penalty matrix. (Management action – nonstatutory)

Recommendation 3.10, Adopted — Direct TCOLE to develop a strategy to analyze and use data in commission decision making. (Management action – nonstatutory)

Recommendation 3.11, Adopted — Direct TCOLE to publish relevant commission information online. (Management action – nonstatutory)

Recommendation 3.12, Adopted — Direct TCOLE to adopt rules to comply with the statutory requirement to establish a risk-based approach to audits. (Management action – nonstatutory)

Recommendation 3.13, Adopted — Direct TCOLE to establish a written policy more clearly separating its administrative and criminal investigations and staff. (Management action – nonstatutory)

Issue 4

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

Recommendation 4.1, Adopted — Update the standard across-the-board requirement related to commission member training.

Recommendation 4.2, Adopted — Update the commission's statute to reflect the requirements of the person-first respectful language initiative.

Recommendation 4.3, Adopted — Authorize the commission to establish advisory committees in rule.

Recommendation 4.4, Adopted — Direct the commission to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law. (Management action – nonstatutory)

Adopted New Recommendation

Complaints Information Update

Update the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public. Specify agencies may not inform parties of the status of complaints if doing so would jeopardize an ongoing investigation.

Fiscal Implication Summary

These recommendations would not result in a significant fiscal impact to the state. 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.

Summary of Sunset Staff Report

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.

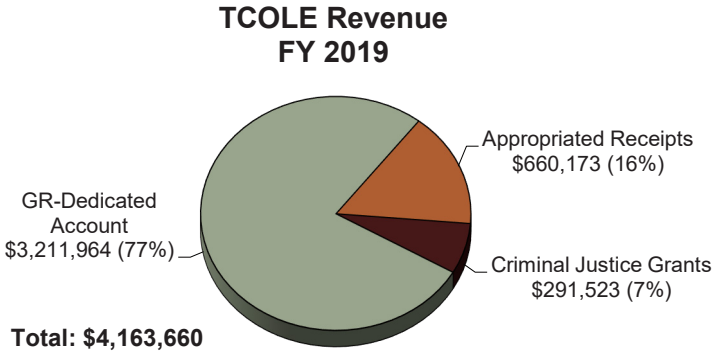
Agency at a Glance

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 commission 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 commission 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 curriculum standards for basic training and continuing education courses.
- Approving, assisting, and auditing providers of basic training and continuing education courses.
- Investigating complaints and taking disciplinary actions against licensees receiving a conviction or deferred adjudication for certain crimes and for violations of TCOLE statute and rules, including training standards.
- Maintaining and adding names to the Texas Peace Officers' Memorial.

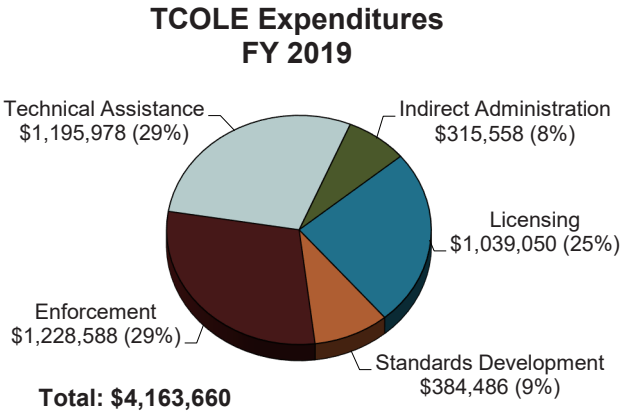
Key Facts

- **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 quarterly to set policies and adopt rules to carry out TCOLE's mission.
- **Funding.** In fiscal year 2019, TCOLE operated on a budget of nearly $4.2 million, as shown in the chart, *TCOLE Revenue*. 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. Notably, the Legislative Budget Board projects the account will have a zero balance by fiscal year 2024.[1] The commission 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 commission also receives appropriated receipts and state and federal grants administered through

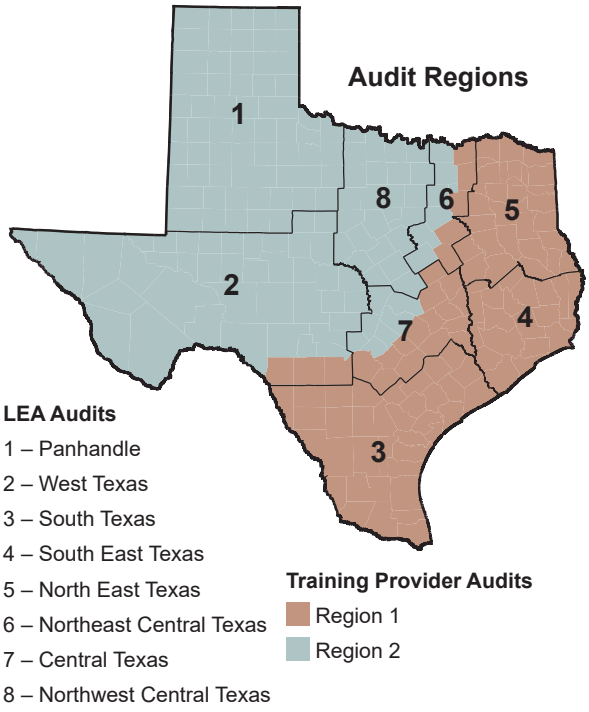


the Office of the Governor's Criminal Justice Division. TCOLE can also receive funds through the Texas Peace Officer Flag Account, but this account had a zero balance at the end of fiscal year 2019.

As shown in the chart, *TCOLE Expenditures*, the commission spent nearly $4.2 million in fiscal year 2019, with about 60 percent going to enforcement and technical assistance, including providing training 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 2017–19 is included in Appendix A.



- **Staffing.** In fiscal year 2019, TCOLE employed 53 full-time staff, including eight regional field service agents who audit LEAs, and two evaluators who audit training providers throughout the state, shown on the *Audit Regions* map. Appendix B compares TCOLE's workforce to the percentage of minorities in the statewide civilian labor force for the past three years.



- **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 an LEA and do not maintain their continuing education, their licenses are placed in an inactive status. The table on the following page, *TCOLE Licenses*, shows the number of active, appointed, and inactive licenses in fiscal year 2019 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. TCOLE performs a biennial check of licensees' compliance with training standards, most of which are on a two-year completion cycle. During fiscal year 2018, when the commission performed its last compliance check, TCOLE issued 729 reprimands for noncompliance.

TCOLE Licenses

License Type	Description	Active	Appointed	Inactive
Peace Officer	A person the state has vested with law enforcement authority, including the power to make arrests.	91,504	79,168	126,818
County Jailer	A person who oversees inmates and enforces their confinement in a county jail.	49,185	26,363	167,325
Telecommunications Operator	A person who manages emergency phone calls and radio calls, and transfers them appropriately.	13,744	10,333	62,074
School Marshal	A person employed and appointed by a school to respond to certain crisis situations.	226	207	9
Total		**154,659**	**116,071**	**356,226**

- **Law enforcement agencies (LEAs).** TCOLE oversees approximately 2,700 LEAs in Texas, as listed in the textbox, *Examples of Law Enforcement Agencies*. The majority of these agencies are small, with 60 percent employing 10 officers or fewer, particularly sheriffs' offices and municipal police departments. Since 2009, the commission has registered 269 new LEAs. To establish a new LEA, applicants must submit documentation about their funding, physical assets, policies, and other requirements, and pass an inspection. TCOLE audits all LEAs at least once every five years to ensure compliance with basic recordkeeping standards. In fiscal year 2019, TCOLE's field service agents audited 768 LEAs.

- **Training standards and providers.** TCOLE develops state standards for all licensees' mandatory basic training, such as arrest procedures and professional ethics for peace officers, and continuing education, for example on cultural diversity for peace officers and jailers. The commission contracts with academies and other training providers to provide nearly all required training, but TCOLE directly offers training courses for school marshals. TCOLE also approves third-party licensing exam sites to ensure security and proper exam protocols.

  TCOLE's two staff evaluators inspect 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 2019, TCOLE contracted with 310 training providers, including 113 academies, one "academic

Examples of Law Enforcement Agencies

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

alternative" (Austin Community College) offering college courses that lead to basic licensure, and 196 providers offering only continuing education courses.

- **Enforcement.** TCOLE investigates potential administrative violations of licensing and training standards, and reported criminal convictions. TCOLE does not have authority to investigate or take action against a licensee 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 2019 is summarized in the table, *Disciplinary Actions*.

- **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.

Disciplinary Actions FY 2019

Revocations	
Criminal Conduct	30
Other	4
Suspensions	
Criminal Conduct	47
Noncompliance	145
Surrenders	86
Reprimands*	17
Cancellations	7

* TCOLE proactively checks for noncompliance biennially. The last noncompliance check in fiscal year 2018 resulted in 729 reprimands for noncompliance.

[1] Legislative Budget Board, *Strategic Fiscal Review*, accessed October 22, 2020, http://www.lbb.state.tx.us/Documents/Budget/6450_Strategic_Fiscal_Review.pdf.

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 standards of professional conduct for them. The table, *Texas Regulatory Standards for Law Enforcement Personnel*, 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 their own standards of professional conduct for law enforcement personnel, which are typically upheld by their own internal affairs departments.	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 standards of professional conduct.

The Sunset review of TCOLE found the lack of statewide standards of professional conduct, inadequate and uncoordinated training, and missing accountability 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. Especially in today's environment, rather than attempting to repair a fundamentally broken system, it is time to take a comprehensive look at how the state regulates law enforcement and make needed changes to protect the health, safety, and welfare of Texans as well as law enforcement personnel.

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

Texas needs to ensure law enforcement personnel meet required standards.

Law enforcement personnel and LEAs play an important role in ensuring the safety and security of Texans, serving as leaders in their communities, first responders to emergencies, and vital public servants. For example, in 2019, Texas officers responded to reports of 120,508 violent crimes and 685,371 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, licensure by TCOLE grants a privilege to carry arms with a specific purpose 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, so Texas needs to ensure 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 reprimand poor performance. Because LEAs are responsible for enforcing standards, it is important that both the standards and their enforcement are consistent. Consistency allows both licensees and the public to set expectations for acceptable law enforcement services statewide. Further, statewide oversight helps ensure each LEA has the policies, equipment, and personnel in place to protect and serve their communities while holding their employees accountable.

Every state regulates law enforcement personnel 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.

The patchwork of local policies inconsistently defines standards of professional conduct for law enforcement personnel.

Texas lacks statewide standards of professional conduct for law enforcement personnel, which are instead set and enforced inconsistently at the local level.

- **Inconsistent local policies.** Texas does not set statewide standards of professional conduct for law enforcement personnel, and instead primarily relies on the 2,700 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 they are charged to protect and serve. The *Examples of LEA Policies* textbox on the following page provides examples of policies LEAs establish independently and inconsistently at the local level in the absence of statewide standards of professional conduct.[2] 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 some policies locally may be appropriate to account for those differences, standards of professional conduct for state-licensed law enforcement personnel should not vary significantly. Currently, certain conduct by a licensee is permissible in one LEA jurisdiction but not in another. For example, in the Dallas-Fort Worth metroplex, chokeholds are an acceptable technique west of the 3200 block of Sandy Lane, but are not allowed on the east side of the same street because it crosses two different LEA jurisdictions.[3] Establishing minimum statewide standards of professional conduct would ensure everyone uses the same benchmark for judging conduct across jurisdictions.

Examples of LEA Policies

Use of Force: regarding proportionality and necessity of force in given situations

Use of Tactical Teams: setting training, equipment, and deployment standards

Use of Invasive Surveillance Techniques: regarding safety, privacy, and use of technologies

Stops and Searches: limiting or regulating the use of pedestrian or traffic stops

Arrests: setting restrictions for low level offenses and using summons and citations as alternatives

Body Camera Footage Release Policy: regarding public distribution after critical incidents

Interrogations: promoting reliability, eliminating undue coercion, and treating persons with dignity and fairness

- **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. Defining appropriate behavior clearly related to the regulated practice provides clear expectations to both licensees and the public as to the responsibilities and privileges of the regulated profession, as well as a consistent basis to evaluate the actions of licensees. However, TCOLE has no role in setting or enforcing standards of professional conduct for law enforcement personnel. 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.[4]

TCOLE does not set or enforce standards of professional conduct.

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, and that licensees comply with training requirements. However, the last time TCOLE comprehensively evaluated the core tasks of law enforcement personnel in Texas was in 1997, contracting with the University of Texas with financial support from the Texas Police Association.[5] More than two decades later, there have been significant changes in law enforcement technologies, tasks, and expectations that are not addressed in TCOLE's minimum training and education standards.

A full review of training requirements for law enforcement personnel is long overdue.

As previously noted, without statewide standards of professional conduct for law enforcement personnel, 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 also become obsolete. As a result, a proactive, holistic review of the key duties and training needs for law enforcement personnel in Texas is long overdue.

- **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.

Examples of Training Requirements

- Family Violence, Child Victims, and Related Assaultive Offenses: 4 hours
- Civilian Interaction: 2 hours
- Canine Interaction: 4 hours
- Racial Profiling: 4 hours
- Human Trafficking: 4 hours
- Identity Crimes: 4 hours
- De-escalation: 8 hours
- Victims of Crime: 10 hours
- Arrest, search, seizure: 40 hours
- Firearms: 48 hours

Peace officers. In 2019, TCOLE published the latest revision of its required Basic Peace Officer Course (BPOC), taken in training academies, summarized in Appendix C. Licensed peace officers must complete 696 hours of required training, significantly less than 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.[6] While various topics in the BPOC have overlapping subject matter, the number of hours dedicated to certain key areas of public safety appears low, listed in the textbox, *Examples of Training Requirements*. For example, peace officers receive four hours of dedicated training on family violence, despite the sensitive nature and high prevalence of such crimes in Texas.[7] Peace officers receive more hours of dedicated training on canine encounters — four hours — than on civilian interaction — two hours. TCOLE's required curriculum includes only 40 hours on arrests, search, and seizure, one of peace officers' primary tasks.

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 municipal 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.

County jailers and telecommunicators. Jailers must complete a 120-hour Basic County Corrections Course, which was last updated in 2018. Similar to the BPOC, stakeholders indicated a need for additional training topics, including courses on de-escalation and more scenario-based training. A new, 80-hour basic telecommunicators course was released in October 2020, replacing a 40-hour course stakeholders reported was outdated. New material on crisis communications and cultural diversity, which are key to the telecommunicator role, now comprise half the course.

The lack of consistent training requirements does a disservice to licensees, agencies, and Texans.

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 had the opportunity to comprehensively assess the needs of schools and the effectiveness of its training requirements since then to ensure licensees can best protect Texas students.

- **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 to take 40 hours of continuing education every two years, including a course on legislative updates.[10] More junior officers must take four specific courses every four years — cultural diversity, mental health crisis intervention, de-escalation, and special investigative topics.[11] In addition, state law requires officers in specific roles to take additional preparatory courses for those assignments with varying frequency, summarized in Appendix D.[12] Officers that earn an intermediate certification are permanently exempted from the four-year training requirements.[13] 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.[14]

  Law enforcement personnel have minimal requirements and oversight to ensure ongoing competency.

  County jailers and telecommunicators. State law requires county jailers to take one eight-hour course in cultural diversity every four years.[15] Telecommunicators must take 20 hours of courses every two years, but have no required subjects.[16] Neither county jailers nor telecommunicators must take training on updates to the laws governing their profession, as peace officers do, or additional courses to refresh or acquire new skills. Although county jailers who are designated to carry a firearm for certain responsibilities must demonstrate ongoing weapons proficiency at least annually, failure to do so does not affect the individual's license.[17]

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.[18] 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.

- **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 its curriculum. More than half of the topics and 70 percent of the hours in the BPOC are statutorily required, as shown in Appendix C, 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. Additionally, statutory deadlines to complete training on certain topics do not align with TCOLE's established training cycles. As shown in Appendix D, these inflexible and unwieldy continuing education requirements create confusion for licensees and LEAs.

TCOLE's training is outdated and does not meet current needs.

Over the past decade, reductions in TCOLE's appropriations for curriculum development, and consequently its staffing and resources, have exacerbated the situation, and the commission's training materials show clear signs of neglect. Several courses, including those on racial profiling and identity theft, have not been revised since they were created more than a decade ago, despite their dynamic nature. Overall, course revisions commonly focus on formatting with minimal changes to content. Even recently revised courses cite decades-old statistics and studies. For example, the 2019 BPOC materials on several new or updated topics, like identity crime and human trafficking, are still primarily based on sources from the late 1990s and early 2000s, with citations dating as early as 1979. Although TCOLE recently entered into a grant-funded contract with Texas A&M Engineering Extension Service (TEEX) to update several continuing education courses between May and December 2020, basic courses will remain deficient. Additionally, while TCOLE has developed a small catalog of 20 online courses, several are outdated, including law updates from past years, and stakeholders have called for more online offerings, the importance of which was made even clearer during the COVID-19 pandemic.

Several training courses have not been revised since their creation more than a decade ago.

The state cannot hold law enforcement personnel and agencies fully accountable.

Currently, the state's regulation of law enforcement 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. Enforcement of 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.

- **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.[19] 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.[20] For example, TCOLE was not able to take action against an officer who recently gave a dog feces sandwich to a person experiencing homelessness in San Antonio.[21] The officer was fired, rehired by the city after arbitration, and then subsequently fired again for a second incident involving the use of feces.[22] 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.[23] In fiscal year 2019, the majority of TCOLE's administrative enforcement actions, 68 percent, were taken in response to continuing education deficiencies.

TCOLE cannot take action against a licensee for serious misconduct relevant to fitness for licensure.

- **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. Despite this notice, about a quarter of licensees given a dishonorable discharge are subsequently employed at another LEA, as shown in the chart, *Dishonorably Discharged Rehires*. Additional background for the F-5 process is provided in the textbox on the following page, *F-5 History*.

Dishonorably Discharged Rehires

	FY15	FY16	FY17	FY18	FY19
Licensees Dishonorably Discharged	596	522	547	556	607
Licensees Rehired	148	142	142	147	170
Percent	25%	27%	26%	26%	28%

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.

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.

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 nine license revocations in the last five fiscal years, despite TCOLE receiving notice of over 2,800 dishonorable discharges during the same time. 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.[24] 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.[25] TCOLE does not have authority to approve LEAs. Instead, TCOLE registers LEAs so they can employ law enforcement personnel. While LEAs are held locally accountable to some extent, TCOLE's nominal oversight authority leaves LEAs largely unaccountable to the state.

Local law enforcement agencies are largely unaccountable to the state.

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.[26] 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.[27] LEAs created since 2009 must provide TCOLE information about the need for, resources available to, and operational policies of the local agency.[28] 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 an LEA registration.

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.[29] Even when statute requires an LEA to have a certain policy, TCOLE lacks the authority to verify the adoption of or adherence to it, 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.[30] However, TCOLE has no authority to audit these policies and only tracks whether the LEA files the required reports.

TCOLE cannot take action against a law enforcement agency or revoke its registration.

A blue ribbon panel could provide expertise and recommendations on increasing the effectiveness of law enforcement regulation 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 regulating law enforcement. 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 regulate law enforcement in Texas.

A blue ribbon panel is needed to fully review, evaluate, and recommend changes to law enforcement regulation 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.[31] 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.[32] 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 comprising subject matter experts to review data and provide recommendations to address dental anesthesia accidents and deaths and emergency protocols. The Legislature has also established commissions to examine the area of criminal justice, such as the Timothy Cole Exoneration Review Commission in 2015.

Sunset Staff Recommendations

Change in Statute

1.1 Establish a blue ribbon panel to comprehensively evaluate the regulation of law enforcement in Texas.

This recommendation would establish a 15-member blue ribbon panel, 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 regulation of law enforcement in Texas. The panel would focus on three key areas:

1. Standards of professional conduct for licensees
2. Licensee training and education requirements
3. Accountability for licensees and law enforcement agencies

The governor, lieutenant governor, and speaker would each appoint three industry members and one public member, to 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 Texas District and County Attorneys Association or the chair's designee. TCOLE's executive director and a representative from the Office of the Attorney General would serve as non-voting ex officio members. Industry members should represent diverse knowledge and experience of law enforcement and may include, for example, law enforcement personnel and LEA representatives, criminal justice experts, victims' rights groups, educators, members of the judiciary, and local elected officials. The governor would designate a chair and vice chair of the panel, and TCOLE staff would provide administrative support.

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

The full panel should hold regular public hearings to solicit input and report on its progress, and 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 assemble the panel by September 1, 2021, and the panel would deliver a report with recommendations to the Sunset Commission and Legislature no later than June 1, 2022, 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. Which statewide standards of professional conduct should apply to law enforcement personnel and who should be responsible for reviewing and updating them?
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?
   c) Should TCOLE continue to regulate training providers?
3. How can Texas best ensure accountability of law enforcement personnel and agencies?
   a) Should TCOLE be authorized to address licensee misconduct?
   b) How should the administrative process protect licensees' due process?
   c) Are any changes needed to the F-5 process, including TCOLE's role in it?
   d) Should TCOLE have authority to set or enforce 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, 2023. The Sunset Commission would perform a limited purpose review of TCOLE to evaluate the blue ribbon panel's recommendations related to the commission, and TCOLE's implementation of the other recommendations adopted by the Sunset Commission and the 87th 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 $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. Any support required of TCOLE could be implemented with existing resources.

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1 Department of Public Safety (DPS), *Crime in Texas 2019* (Austin, TX: DPS 2020), 3.

2 B. Friedman et al., *Changing the Law to Change Policing: First Steps*, accessed October 27, 2020, https://law.yale.edu/sites/default/files/area/center/justice/document/change_to_change_final.pdf.

3 Fort Worth Police Department, General Orders (Fort Worth, TX: Fort Worth Police Department, 2020), 108; Arlington Police Department, General Orders Use of Force, Policy Number 401.00 (Arlington, TX: Arlington Police Department, 2020) 7, 8.

[4] 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*, accessed Sept. 22, 2020, https://www.texasbar.com/AM/Template.cfm?Section=Home&ContentID=27271&Template=/CM/ContentDisplay.cfm.

[5] Texas Commission on Law Enforcement Standards and Education and University of Texas at Austin, *Peace Officer Job Task Analysis* (Austin, TX: Texas Commission on Law Enforcement Standards and Education, 1998).

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

[7] Texas Department of Public Safety, *2019 Crime in Texas*, accessed October 1, 2020, https://www.dps.texas.gov/crimereports/19/cit2019.pdf.

[8] Dallas Police Academy, *Basic Training Curriculum*, accessed October 23, 2020, https://dallaspolice.net/joindpd/Shared%20Documents/DPD%20Basic%20PO%20Course%20Curriculum%20-%207-9-18%20-%20MASTER.pdf.

[9] Section 1701.260, Texas Occupations Code.

[10] Section 1701.351, Texas Occupations Code.

[11] Section 1701.352(b)(2), Texas Occupations Code.

[12] Sections 1701.262, 1701.263, 1701.267, 1701.352, 1701.656, 1701.702(b) and (c), Texas Occupations Code.

[13] Section 1701.352(b)(2), Texas Occupations Code.

[14] 22 T.A.C. Section 166.2(a)(2) (Physicians); Section 81.113(b), Texas Government Code (Attorneys).

[15] Section 1701.310(a), Texas Occupations Code.

[16] Section 1701.352(i), Texas Occupations Code.

[17] Section 1701.355(a-1), Texas Occupations Code.

[18] Section 1701.260(h), Texas Occupations Code.

[19] Sections 1701.312, 1701.313, 1701.502, and 1701.503, Texas Occupations Code; 37 T.A.C. 217.1, 223.15, and 223.19.

[20] Section 1701.457, Texas Occupations Code.

[21] Emilie Eaton, "Three San Antonio police officers, fired by SAPD, were later hired in Leon Valley. Here's Why," accessed Sept. 24, 2020, https://www.expressnews.com/news/local/article/Three-San-Antonio-police-officers-fired-by-SAPD-15383921.php.

[22] Elizabeth Ruiz, "SAPD Officer Who Gave Feces Sandwich To Homeless Man Loses Job After Arbitration On Second Offense," accessed Oct. 2, 2020, https://www.ktsa.com/sapd-officer-who-gave-feces-sandwich-to-homeless-man-loses-job-after-arbitration-on-second-offense/.

[23] Sections 1701.501, 1701.502, and 1701.503, Texas Occupations Code; 37 T.A.C. 223.15 and 223.19.

[24] Sunset Advisory Commission, *Texas Board of Chiropractic Examiners Sunset Staff Report* (Austin: Texas Sunset Advisory Commission, June 2017), 15–17.

[25] 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), 25–26.

[26] Sections 2.12, 2.121, 2.125, 2.126, and 2.127, Texas Code of Criminal Procedure.

[27] Section 560.052(a), Texas Occupations Code; 22 T.A.C. Section 291.

[28] Section 1701.163, Texas Occupations Code.

[29] Section 2.134(g), Texas Code of Criminal Procedure.

[30] Section 2.132(b), Texas Code of Criminal Procedure.

[31] "Executive Order WPC–45," Office of the Governor, last modified June 10, 1982, https://lrl.texas.gov/scanned/govdocs/William%20P%20Clements/1982/WPC-45.pdf; "An Inventory of Records at the Texas State Archives 1973 to 1990" Office of the Governor, Criminal Justice Division, accessed September 28, 2020, https://legacy.lib.utexas.edu/taro/tslac/50043/tsl-50043.html.

[32] Ibid.

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

Background

The Texas Commission on Law Enforcement (TCOLE) administers and monitors a small number of contracts, primarily related to TCOLE's annual conference and the commission's ongoing IT projects. TCOLE has contracted with a single vendor, Productivity Center, Inc. (PCI), for its two primary IT projects:

- The online services portal, MyTCOLE, that provides licensees with free access to their employment and training history.
- The database development project to upgrade TCOLE's licensee database into an agency-wide data depository with built-in functionality for all of TCOLE's divisions.

The commission entered into the MyTCOLE contract in 2019, paying $15,000 per year for a three-year term. The commission first entered the database contract in 2009 and renewed the contract in 2018 for another 10-year term. The database contract does not cost the commission, but end users — most of whom are law enforcement agencies like police and sheriffs' departments — pay subscription fees directly to PCI to access licensee information. PCI does not provide software and database development services to any other clients, and dedicates its three full-time programmers to fulfilling only the commission's two contracts.

When evaluating an agency's contracting operations, Sunset uses the general framework established in the State of Texas Procurement and Contract Management Guide, as well as documented standards and best practices compiled by Sunset staff. While TCOLE is aware of the need to make improvements to its IT contracting and procurement operations, the commission should ensure its improvements adhere to best practices to address the following issues.

Findings

Several of TCOLE's contracting procedures limit the commission's ability to effectively evaluate and manage its IT contracts.

TCOLE's contracting approach has allowed progress on its IT projects to stall. Despite being PCI's only client, TCOLE still lacks a fully functioning database, even though end users have paid an estimated $6 million over the past decade. And while PCI's programmers are focused solely on the MyTCOLE project, multiple deadlines for deliverables have passed, with any progress largely attributable to increased prodding by commission staff. Several of TCOLE's contracting practices could be improved to more effectively analyze and oversee its contracts, including holding vendors more accountable.

- **Inadequate training.** Commission staff involved in contract procurement should receive standard contract training, including training on IT procurement requirements provided by the Legislative Budget Board (LBB)

and the Department of Information Resources (DIR), which statute requires for agencies with IT contracts.[1] TCOLE does not ensure that all staff involved in IT contract procurement or management receive this training. More comprehensive, detailed IT training would have precluded many of the problems identified below in TCOLE's evaluation, development, and management of its IT contracts, and would improve the commission's future contracting activities.

TCOLE did not consider all relevant factors when awarding its database contract.

- **Poor risk assessment.** Agencies should make a preliminary risk assessment to determine the financial and managerial resources a contract will need from beginning to end, and update the assessment on an ongoing basis. TCOLE has not performed a complete risk analysis to document the ongoing justification of its database contract. Although TCOLE considered the upfront costs of competitors' bids in relation to the commission's IT budget and existing investment in the database, TCOLE did not consider other factors, such as the high total contract value, source of funding, or PCI's capacity to timely deliver a fully functional database. Ultimately, TCOLE's focus on being fiscally responsible with its IT funds prevented the commission from seeking out other contractors who may have been able to provide a better database solution in the long term for both end users and the commission.

- **Incomplete determination to outsource.** Agencies that outsource functions should conduct a cost-benefit analysis to compare and document the likely costs and benefits of providing the function internally as compared to outsourcing the function. When implemented, such analyses enable agencies to measure and communicate program outcomes and costs. TCOLE did not account for its own soft costs in its cost-benefit analysis for the database project, such as the number of employees and resources needed for database troubleshooting and coordinating with PCI's programmers for the duration of the contract. TCOLE also did not evaluate the cost of bringing database expertise in-house. As a result, TCOLE cannot demonstrate contracting with the outside vendor is more cost-effective than developing and retaining the capacity to maintain the database internally.

TCOLE contracts lack terms to induce efficient and effective performance.

- **Ineffective contract terms.** Contracts should incorporate positive and negative incentives to induce efficient and effective performance by vendors. For example, in contracts for services, tying payments to successful completion of deliverables provides an incentive for the contractor to perform in an efficient manner. Conversely, tying consequences to the failure to achieve certain milestones allows an agency to better ensure compliance with the contract.

  Lack of performance incentives. The MyTCOLE contract lacks performance-based incentives to leverage timely completion of deliverables. For example, the contract does not provide TCOLE with the ability to withhold payment until deliverables are complete. As a result, PCI continues to be paid under the contract no matter how poorly it performs, hampering efforts to increase the effectiveness and efficiency of TCOLE's operations.

The database contract lacks terms that would allow TCOLE to hold PCI accountable for failing to provide deliverables on time and within budget. Since PCI receives payment directly from database users, TCOLE cannot withhold payment for poor performance. The contract also lacks any meaningful consequences for poor performance, such as termination of the contract.

TCOLE cannot withhold payment for poor performance on its database contract.

No cost information. TCOLE's database contract does not require PCI to report the cost of the project or the revenue it receives. Without an accounting of costs and revenue, TCOLE cannot determine whether end users are being charged more than PCI's actual development costs, and thus cannot evaluate whether the database contract is successfully keeping project costs down. Additionally, TCOLE cannot accurately report on PCI's performance as a vendor without knowing this basic financial information.[2]

Sunset Staff Recommendations

Management Action

2.1 Direct TCOLE to require regular training for all staff involved in the contracting process.

This recommendation would direct TCOLE to identify training for staff that perform contract development and monitoring functions, and require this training at regular intervals. TCOLE would work with DIR and LBB to determine contracting training to meet staff needs. This training should include information related to risk assessment, contract development, performance monitoring, and reporting requirements. Improved contract training would allow TCOLE staff to more effectively monitor contracts and identify potential problems.

2.2 Direct TCOLE to develop a formal contract development and solicitation process for all of its contracts.

This recommendation would direct TCOLE to develop a standard, comprehensive process for developing contract proposals and soliciting vendors. This process should include the following:

- A standard needs analysis that sufficiently justifies why one or more contractors for a certain function is necessary for the commission to execute its mission. This analysis should include a preliminary risk assessment to determine the financial and managerial resources a contract will need from beginning to end, as well as a cost-benefit analysis to determine whether a function should be outsourced or kept internally.
- Documentation for each step of the contract development, solicitation, evaluation, and selection process, in addition to any other documentation or reporting requirements in state procurement laws for these activities.
- Any other key steps in the contract procurement and management process the commission considers necessary.

TCOLE should ensure its contracting process accommodates all state procurement and contracting requirements, such as public posting and other solicitation requirements. The commission should develop this process by May 1, 2021, so it can be used to procure contracts needed for fiscal year 2022.

2.3 Direct TCOLE to include detailed, actionable performance incentives in its contracts.

This recommendation would direct TCOLE to include specific contract terms in all contracts to ensure the commission is able to effectively monitor contractor performance and take action when necessary. These terms would include performance-based incentives that encourage efficient and effective performance, and consequences for poor performance. TCOLE should consider including these measures in any other contracts in the future.

Fiscal Implication

These recommendations would not have a fiscal impact to the state, as TCOLE could implement them with existing staff and resources. Improving the efficiency of the commission's IT contract management, monitoring, and enforcement processes should result in better value for the state, TCOLE, and end users.

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1 All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 656.050, Texas Government Code.

2 Section 2155.089, Texas Government Code.

Issue 3

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 155,000 active licensees, regulates about 2,700 law enforcement agencies (LEAs), and contracts with about 300 training providers statewide. TCOLE staff audits LEAs and training providers for compliance with recordkeeping and other standards, and provides ongoing assistance, such as answering questions and providing training to ensure compliance. TCOLE also 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 criminal background checks.** To help protect the public, licensing agencies commonly conduct criminal background checks using the Department of Public Safety's fingerprint system, which accurately identifies the individual, uncovers criminal history on applicants and licensees nationwide, and provides automatic criminal history updates. 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] However, requiring employers to obtain this key information, rather than TCOLE, removes the commission from an important oversight process and risks the state issuing a license to someone with an unreported disqualifying offense.

  TCOLE does not conduct criminal background checks on licensees.

  Additionally, the ability to receive ongoing state and federal criminal history updates, or "rap backs," on licensees is critical to a regulatory agency, as it provides timely information about criminal activity after licensure.

However, since TCOLE is not responsible for collecting criminal history information, except for a small subset of trainees, it must rely on self-reporting by licensees or information reported from the arresting agency or employer, which may be delayed or go unreported entirely. In a sample of 100 recent audit reports, TCOLE found 15 of the LEAs audited had criminal history deficiencies, including the failure to correctly order criminal history checks on licensees, allowing potentially unsafe individuals to be employed in communities, jails, and schools.

- **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 outdated, subjective, and may be determined inconsistently. 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.

- **Subjective and anticompetitive training provider qualifications.** A licensing agency's system for reviewing and approving continuing education should be based on reasonable, fair standards, not give some continuing education providers undue advantage over competitors.

  Subjective application and selection process. Similar to most regulatory agencies, statute requires TCOLE to recognize, prepare, or administer continuing education programs for licensees.[3] However, TCOLE by rule requires continuing education providers to submit an assessment of the need for an additional provider in their geographic region or area of expertise before being approved.[4] This requirement creates the potential for anticompetitive treatment and is unrelated to the quality of training or competency of the provider. Further, absent clear statutory direction otherwise, TCOLE should not prevent training providers from entering a particular market based on subjective perceptions of need.

TCOLE should not subjectively prevent training providers from entering a particular market.

  Unfair disqualifications. By rule, training providers must undergo a facility inspection before TCOLE will contract with the provider to train on core courses.[5] However, the commission's requirement for training providers to maintain a physical domicile in Texas might unnecessarily burden certain providers, including those solely offering online courses or those domiciled out of state, where TCOLE inspectors lack jurisdiction. This requirement potentially limits licensees' access to online courses that could broaden their training opportunities.

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 complainants. When TCOLE receives a records request about an open investigation, the commission attempts to keep the complainant's identity confidential to prevent retaliation. However, TCOLE has faced legal challenges to its authority to maintain complainant confidentiality. Since individuals in law enforcement are in a position of respect and often, authority, complaints by the public, colleagues, or peers merit protection of a complainant's identity. Without it, individuals may be dissuaded from filing legitimate complaints. While licensees may eventually find out the identity of the complainant as the investigation process proceeds, 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.

TCOLE does not provide a standard complaint form.

- **Unclear complaint process.** Individuals or organizations should be able to file a written complaint against a licensee on a simple form on the commission's website, through email, or through regular mail. The form should clearly establish the information needed to allow for an investigation and provide information about what to expect throughout the process. While the complaints page of TCOLE's website can generate a blank email to send to the commission, it does not provide a form for a complainant to complete and submit. Using a standard intake form could help improve management of commission operations, alert the commission to potential problems in its jurisdiction, and raise awareness of issues with high risk or high visibility. A standard form would also help complainants by directly providing information about the full complaints process.

- **Lack of authority to issue subpoenas.** An agency's enabling legislation should be consistent with its actual operations and needs. 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 relevant to a pending investigation.[6] While TCOLE does issue subpoenas for relevant records, it lacks explicit statutory authority to do so.[7] Providing clear authority to issue administrative subpoenas would insulate TCOLE from legal challenges that could delay or prevent a complete investigation.

TCOLE's statute is not consistent with its actual operations and needs.

- **Insufficient authority to evaluate allegedly impaired licensees.** Agencies that regulate high-risk professions, including healthcare and law enforcement, should have clear authority to order psychological or physical evaluations for potentially impaired licensees under appropriate circumstances. 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.[8] TCOLE rule further authorizes law enforcement agencies' chief administrators to order a "fit

for duty review" of a licensee if they suspect an individual may no longer be able to perform the job safely and effectively.[9] However, TCOLE does not have similar authority to require an examination of licensees beyond the initial licensure process, or clear authority to suspend a licensee who is found to be impaired.[10] 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.[11] Since these conditions can arise at any point during an individual's career, TCOLE should have the authority to require an examination when there is cause for concern and take appropriate action.

TCOLE lacks authority to suspend a licensee who is found to be impaired.

- **Unclear temporary suspension authority.** Agencies should have the authority to temporarily suspend a license in situations where substantial harm can result if an activity is not stopped immediately. Under this authority, a license may be suspended without notice, subject to subsequent hearings designed to ensure due process. Currently, TCOLE temporarily suspends licenses if an individual is arrested or indicted for certain felonies that represent an imminent peril to public health, safety, or welfare, as defined in rule, but lacks clear statutory authority to do so and has faced legal challenges to this practice.[12] Given the significant authority vested in law enforcement licensees, and the serious nature of their work, TCOLE should have clear statutory authority to temporarily suspend a license when warranted by imminent threats to public health, safety, or welfare.

TCOLE does not use a penalty matrix to help guide its disciplinary actions.

- **Incomplete and potentially unfair penalty guidelines.** A licensing agency should establish a set of guidelines, such as a penalty matrix, that links specific types of violations to specific penalties or penalty ranges and provides for aggravating and mitigating factors. Such guidelines help ensure disciplinary actions and sanctions correspond to the nature and seriousness of the offense, and promote transparency and consistency in how sanctions are applied to similar types of violations. Statute requires the commission to establish a written enforcement plan in rule, but limits it to only the application of administrative penalties.[13] TCOLE does not use a penalty matrix to guide its assessment of other sanctions, or mitigating and aggravating factors. Instead, staff looks through past case files involving similar offenses to get a sense of past practice. Without standard, documented procedures to guide the application of sanctions for specific violations, or the consideration of mitigating and aggravating factors, TCOLE cannot ensure licensees are treated fairly and equitably.

Weak internal operations prevent TCOLE from effectively and transparently regulating law enforcement.

- **Poor use of data.** Regulatory agencies should compile detailed statistics about audits, investigations, and enforcement actions taken against licensees, and use that information to regularly assess and improve the effectiveness of their operations. TCOLE's approach to collecting and maintaining data undermines its ability to use the data effectively. The commission maintains

most information on audits and enforcement actions in scattered and difficult-to-analyze formats. All of TCOLE's databases lack interoperability, and many are only manually searchable. For example, the commission cannot easily pull summary reports on all licensed individuals with repeat offenses or investigations without searching the individual licensees' files. TCOLE instead relies on institutional knowledge and personal observation to identify potentially problematic issues and drive decisions. While historical, qualitative information is important, a more data-driven approach to decision making would enable TCOLE to achieve a more comprehensive picture of its auditing and enforcement activities, help the commission prioritize its limited resources more effectively, and better serve the public.

TCOLE relies on institutional knowledge and personal observation to drive enforcement decisions.

In addition to regulatory data, TCOLE inadequately catalogs other key information, including customer service inquiries and technical assistance provided. Collecting data and analyzing trends could help the commission improve operational efficiencies and anticipate stakeholder needs, streamlining customer service and providing relief to TCOLE's under-resourced staff.

- **Limited publicly reported information.** Regulatory agencies should make information on their activities and regulated entities readily available to the public and accessible online. While TCOLE's website is the primary place the public goes to learn about the commission and its operations, it does not consistently provide important information. For example, details about the commission's licensure and enforcement activities are not regularly reported or easily accessible to the public and stakeholders on the commission's website. While TCOLE publishes enforcement statistics in meeting minutes after its commission meetings, the public might not know to look to the meeting minutes for statistics. Further, TCOLE does not post minutes timely; the commission did not publish the minutes from its December 2019 or March 2020 meetings until late September 2020. Improving access to information about the commission's activities and proactively publishing aggregated information for all activities would promote transparency and accountability to the Legislature, licensees, stakeholders, and members of the public.

- **Inefficient audit procedures.** An agency should have processes in place to evaluate the risk level posed by entities and individuals subject to audits, including focusing resources on the highest risk areas. At TCOLE, eight field service agents audit about 2,700 agencies, and two more employees audit 300 contracted training providers statewide, so efficient planning is paramount. However, despite statutory direction put in place during the 2009 Sunset review of the commission, TCOLE has not developed a formal policy or consistent strategy to prioritize audits based on risk.[14] Instead, each employee determines his or her own audit schedule, primarily based on length of time since the last visit, personal knowledge of the regulated community, and, at times, convenience or proximity. Shifting TCOLE's

TCOLE lacks a formal policy or consistent strategy to prioritize audits based on risk.

focus to auditing high-risk agencies and training providers would allow the commission to focus on protecting the public and maximize its limited audit resources in a more objective, strategic manner.

- **Potential conflicts between criminal and administrative activities.** Most licensing agencies serve an administrative function and do not need authority to enforce criminal laws, instead calling upon local law enforcement agencies for assistance with any criminal matters. In contrast, while TCOLE's functions are primarily administrative, it also has some criminal investigative functions and benefits from statutory authority to appoint investigators as peace officers.[15] Additionally, since TCOLE regulates LEAs, it cannot simply rely on local law enforcement agencies to perform its criminal investigations, due to conflict of interest concerns. Although TCOLE distinguishes between administrative and criminal investigations, it has commissioned investigators to perform both functions, which risks blurring the lines between its regulatory functions and limited criminal investigatory authority.

  Further, TCOLE has commissioned about 40 percent of its employees as peace officers, including non-investigative staff. While having a law enforcement background may help build rapport and credibility with licensees and LEAs, having commissioned staff performing purely administrative functions is not appropriate and can create tension and potential conflicts with the regulated community. Establishing policies to clearly separate the commission's administrative and criminal duties, and the staff that perform them, would limit any potential conflicts of interest and allow TCOLE to more effectively and fairly carry out its duties.

Sunset Staff Recommendations

Change in Statute

3.1 Require TCOLE to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.

Under this recommendation, TCOLE would assume the responsibility for conducting fingerprint-based background checks through the Department of Public Safety for all active licensees, rather than the local law enforcement agencies. Due to the large number of law enforcement personnel licensed in Texas, this recommendation would give TCOLE until September 1, 2024 to comply, allowing for a four-year, staggered implementation. Current active licensees would only need to provide their fingerprints one time. Going forward, prospective licensees or applicants for reactivation would provide fingerprints at the time of application. To ensure compliance, this recommendation would also authorize the commission to administratively suspend a license for failure to comply with the background check requirement.

3.2 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.[16] TCOLE would continue to review an applicant's criminal history to determine eligibility for licensure, certification, registration, or approval.

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

This recommendation would explicitly authorize TCOLE to withhold the identity of complainants, except those who voluntarily testify in a proceeding, to the extent possible. TCOLE would continue to protect the identity of testifying complainants, while still ensuring licensees still have access to all necessary information to fully respond to complaints. Protecting complainants' identities makes the public and others more comfortable filing complaints without fear of retaliation.

3.4 Clearly authorize TCOLE to issue subpoenas for investigative records.

Under this recommendation, TCOLE would be explicitly authorized to issue subpoenas to obtain records during investigations, subject to judicial review. This recommendation would ensure TCOLE investigators have timely access to information needed to effectively investigate allegations and make appropriate decisions on possible enforcement actions.

3.5 Authorize TCOLE to require confidential examinations of licensees suspected of being impaired.

This recommendation would expand TCOLE's existing authority to order a psychological or physical examination for licensure to also include licensees suspected of being impaired. As part of this recommendation, TCOLE would be authorized to establish by rule specific conditions for when an examination would be justified. This recommendation would also authorize TCOLE to suspend a licensee who cannot meet standards for physical and mental health, which is already required for initial licensure.[17] Under this recommendation, the specific findings of an examination would be confidential, but the commission could use the information in an enforcement or other proceeding. Any resulting orders would not disclose the underlying impairment, but would instead refer to the statutory basis for the commission's action.

3.6 Authorize TCOLE to temporarily suspend a license if it finds an imminent threat to public health, safety, or welfare.

This recommendation would authorize the commission to temporarily suspend a license if an individual poses an imminent threat to public health, safety, or welfare. To balance this authority with licensees' due process, statute would require TCOLE to set a time and place for a hearing on the temporary suspension at the State Office of Administrative Hearings within 10 days of issuing the suspension order.

Management Action

3.7 Direct TCOLE to remove subjective and anticompetitive requirements for contracted training providers.

This recommendation would direct TCOLE to remove the subjective and anticompetitive requirement for training providers to conduct a needs assessment for an additional provider in their geographic region or area of expertise. TCOLE would continue to review training provider qualifications using objective criteria. In addition, TCOLE should ensure any other requirements, including facility inspection requirements, do not unfairly disqualify or disadvantage certain businesses, such as online-only or out-of-state providers.

3.8 Direct TCOLE to develop an online complaint submission form.

This recommendation would direct TCOLE to develop an online complaint form listing required information and details about the commission's complaint processes. The form should be made available

on the commission's website, but could be submitted through email, regular mail, or in person. The form would ensure complainants know which details to include, and could help eliminate multiple follow-up requests for information. The commission should publish the new form by March 1, 2021.

3.9 Direct TCOLE to develop a penalty matrix.

This recommendation would direct the commission to develop a penalty matrix covering the full range of possible violations by regulated individuals or entities, including not only administrative penalties, but also other sanctions that can be levied against an individual or entity, such as revocation and suspension. A penalty matrix is a guideline with both mitigating and aggravating factors that is designed to inform but not dictate an agency's enforcement actions. The commission should ensure the matrix relates the fines and sanctions to different violations based on their severity, and provide for increased penalties for repeat violations. This recommendation would ensure that the commission can consistently and fairly apply its full range of sanctions to licensees for violations of state laws and rules. The commission should develop this penalty matrix by September 1, 2021.

3.10 Direct TCOLE to develop a strategy to analyze and use data in commission decision making.

This recommendation would direct TCOLE to develop a system to better analyze and use the regulatory data it collects to better inform decision making and prioritize resources across the organization. Under this recommendation, the commission should review its use of databases and data, and develop procedures for consistently capturing and reporting data in a more useful format. More complete and consistent data collection and analysis would help TCOLE improve the way it responds to risk, assesses its own performance, and focuses resources on issues most essential to policymakers and the public. The commission would be required to provide the Sunset Commission an update on its implementation of this recommendation by March 1, 2021.

3.11 Direct TCOLE to publish relevant commission information online.

This recommendation would direct TCOLE to provide important regulatory information on its website in a timely manner, including enforcement statistics, information on upcoming and past public meetings, and proposed rulemaking information. This recommendation aims to increase transparency with stakeholders, the public, and the Legislature. TCOLE should ensure the information and resources available on its website, such as commission meeting minutes, are uploaded promptly, remain current, and are accessible to people with disabilities.

3.12 Direct TCOLE to adopt rules to comply with the statutory requirement to establish a risk-based approach to audits.

This recommendation would direct the commission to develop and adopt rules to formally guide the prioritization of LEA and training provider audits based on risk. In establishing these rules, the commission could consider past or repeat violations, recent complaints, negative media attention, or other indications of increased risks. In developing audit priorities, the commission could also consider if less onerous desk audits of records, which the commission began to employ during the COVID-19 pandemic, would suffice for low-risk entities. Establishing a risk-based approach for audits would ensure the most efficient allocation of resources toward the highest risks to the public. The commission would be required to provide the Sunset Commission an update on its implementation of this recommendation by March 1, 2021.

3.13 Direct TCOLE to establish a written policy more clearly separating its administrative and criminal investigations and staff.

This recommendation would direct TCOLE to establish a written policy delineating when commissioned peace officers should be involved in an investigation. The commission should consider its primarily administrative responsibility and the narrow statutory grounds for pursuing potentially criminal activity by licensees. Additionally, the commission should consider which staff need to be commissioned based on their primary job duties and role within the commission.

Fiscal Implication

Overall, these recommendations would not have a significant fiscal impact to the state. Several of these recommendations would require the commission to develop new rules, policies, and procedures, but ultimately the recommendations should reduce administrative burdens on TCOLE staff and more efficiently allocate the commission's resources.

Recommendation 3.1 to implement fingerprint-based background checks would not have a fiscal impact to the commission, but would require applicants and licensees to pay about $40 for a fingerprint background check through the Department of Public Safety. However, many LEAs offer to pay the cost of fingerprinting for new recruits, so the overall impact to law enforcement personnel cannot be determined. 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 1701.352(a), Texas Occupations Code.

4 37 T.A.C. Sections 215.3(d), 215.5(c), and 215.6(d).

5 37 T.A.C. Section 215.2(b).

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 Section 2001.089, Texas Government Code; 1 T.A.C. Section 155.257.

8 Sections 1701.260(d), 1701.303(b), and 1701.306, Texas Occupations Code.

9 37 T.A.C. Section 211.29.

10 Section 1701.306, Texas Occupations Code.

11 National Alliance on Mental Health, "Law Enforcement," accessed July 28, 2020, https://www.nami.org/Advocacy/Crisis-Intervention/Law-Enforcement.

12 37 T.A.C. Section 223.18.

13 Section 1701.507, Texas Occupations Code.

14 Sections 1701.162(c)(2) and 1701.254, Texas Occupations Code.

15 Section 1701.160, Texas Occupations Code.

16 Section 1701.151(2), Texas Occupations Code.

17 Section 1701.306, Texas Occupations Code.

Issue 4

The Texas Commission on Law Enforcement'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 encourage meaningful review of the Texas Commission on Law Enforcement's (TCOLE) rules, conform the commission'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.

- **Four-year rule review.** The Sunset Act directs the Sunset Commission to assess each agency's rulemaking process, including the extent to which agencies encourage public participation in rulemaking.[1] As part of this assessment, Sunset considers an agency's compliance with statutory requirements in the Administrative Procedure Act, including an agency's review and consideration of the continuing need for each of its rules every four years from the date each rule took effect.[2]

- **Sunset across-the-board provisions (ATBs).** The Sunset Commission has developed a set of standard recommendations that 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.[3] 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.[4] 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.[5] 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.[6] 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 does not meaningfully review and revise its rules every four years.

While TCOLE has timely readopted some of its rules, the commission largely relies on an informal review by commission staff, rather than the formal rulemaking process required by law.[7] TCOLE has not conducted a formal rule review since 2011 and over half of TCOLE's rules have not been re-adopted in more than four years, with nearly 11 percent having not been re-adopted in 10 or more years. Although TCOLE conducted an extensive internal rule review in 2015, it did not include several steps required by law, such as posting the proposed changes in the *Texas Register*, that provide public transparency in the process.[8] Additionally, the commission's informal process fails to provide a meaningful rule review, which should consider whether the initial factual, legal, and policy reasons for adopting each rule are still relevant.[9] The commission's informal process also prevents the commission from fully considering the practical experience the agency, stakeholders, and the public have had with each rule.[10] TCOLE's failure to meaningfully conduct formal rule review results in stakeholders and the public having to comply with rules that may not accurately reflect current law or agency practice, and for the continuation of regulation that may not be meaningful or needed.

TCOLE relies on an informal rule review process that limits public transparency.

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

TCOLE's statute contains standard language requiring commission members to receive training and information necessary to properly discharge their duties.[11] 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.

Local law enforcement agencies that receive grants from the governor's office for body worn camera equipment must report expenditure information to TCOLE for three years after receiving a grant. Statute requires TCOLE to compile these agency reports into an annual report and submit it to the governor's office and Legislature for analysis.[12] Sunset staff found this report includes useful information about the impact of body worn camera programs in the communities where implemented and 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.

The commission lacks authority to create advisory committees in rule.

The commission does not have any statutory advisory committees or authority to appoint advisory committees, except the standard authority every agency has to appoint an advisory committee to provide input about contemplated rulemaking.[13]

Given the diverse group of stakeholders TCOLE impacts, the commission would benefit from statutory authority to formally establish advisory committees in rule. Formal advisory committees would provide valuable input and insights, and increased inclusiveness and transparency in the commission's rulemaking and policy development processes.

Sunset Staff Recommendations

Change in Statute

4.1 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.

4.2 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.

4.3 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, Texas Government Code, to provide expertise for rulemaking and policy development, and for other purposes as needed. 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

Management Action

4.4 Direct the commission to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.

This recommendation would direct the commission to adopt a policy requiring and establishing the process for the four-year review of its rules. The policy should require the review to include the consideration of current, factual, legal, and policy reasons for readopting each rule, as well as practical experience the commission, regulated community, and public have had with each rule over the past four years. Undergoing a more substantive analysis would allow the commission to better engage the public and maintain its rules based on current circumstances and factors. The commission would be required to provide an update on its progress toward implementing this recommendation to the Sunset Commission by April 1, 2021.

Fiscal Implication

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

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1 All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 325.011(8), Texas Government Code.

2 Section 2001.039, Texas Government Code.

3 Section 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

4 Section 325.0123, Texas Government Code.

5 Section 325.013, Texas Government Code.

6 Section 2110.008, Texas Government Code.

7 Section 2001.039, Texas Government Code.

8 Ibid.

9 Ronald L. Beal, *Texas Administrative Practice and Procedure,* (New York: Matthew Bender & Company, 2018), Section 3.8, 36–37.

10 Ibid.

11 Section 1701.059, Texas Occupations Code.

12 Section 1701.653, Texas Occupations Code.

13 Section 2001.031(b), Texas Government Code.

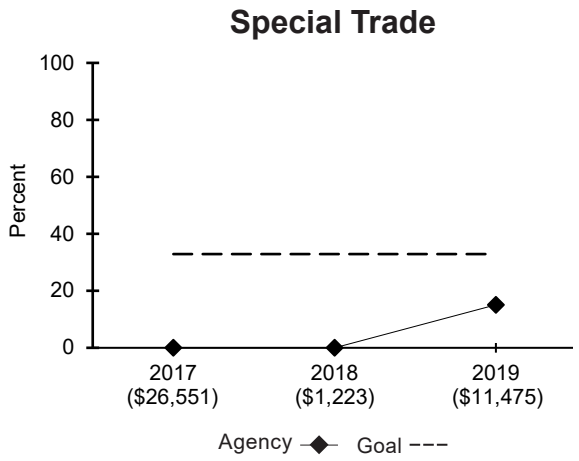
Appendix A

Historically Underutilized Businesses Statistics, FYs 2017–2019

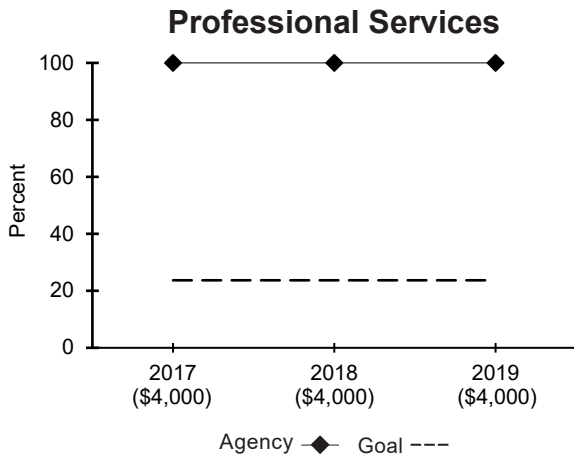
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules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

The following material shows trend information for the Texas Commission on Law Enforcement (TCOLE)'s 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 TCOLE's spending with HUBs in each purchasing category from fiscal years 2017–19. 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 heavy construction or building construction categories. However, the agency exceeded its goals for HUB spending consistently over the last three fiscal years in the professional services and commodities categories.

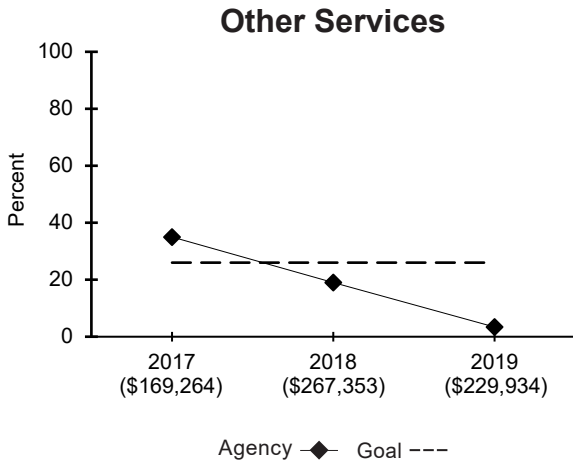


The agency failed to meet the state goal for HUB spending in each of the last three fiscal years.

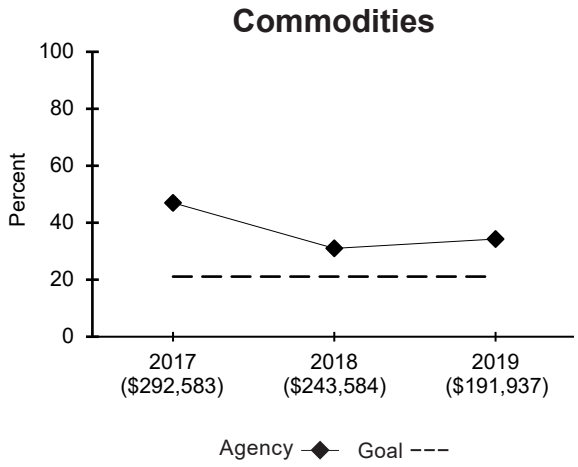


The agency exceeded the state goal for HUB spending in the professional services category in each of the last three fiscal years.

Appendix A



The agency exceeded the state goal for HUB spending for other services in fiscal year 2017, but failed to meet the goal in the last two fiscal years.



The agency 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.

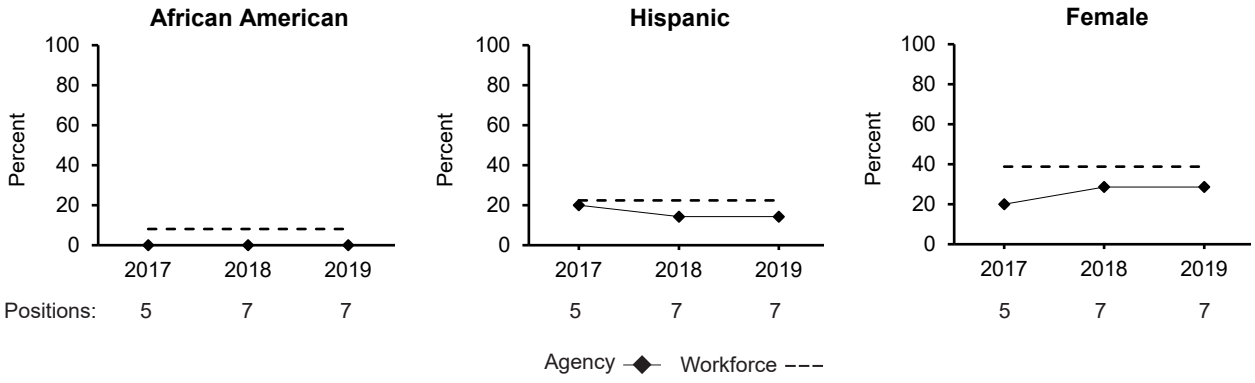
[2] Chapter 2161, Texas Government Code.

Appendix B

Equal Employment Opportunity Statistics, FYs 2017–2019

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Commission on Law Enforcement (TCOLE).[1] The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females 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 TCOLE's actual employment percentages in each job category from fiscal years 2017–19. TCOLE has had difficulty meeting the civilian workforce percentages, particularly in leadership and technical positions. The agency had no employees in the service/maintenance or skilled craft categories.

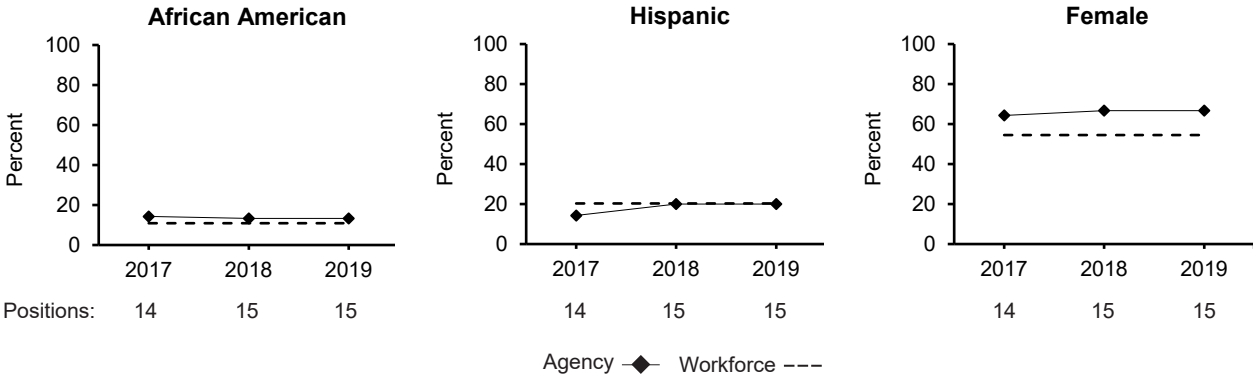
Administration



The agency had no African American employees in the administration category, and fell slightly below the statewide percentage for Hispanics in each of the last three fiscal years. The agency failed to meet the statewide civilian workforce percentage for females in fiscal year 2017, but has made improvements in the last two fiscal years.

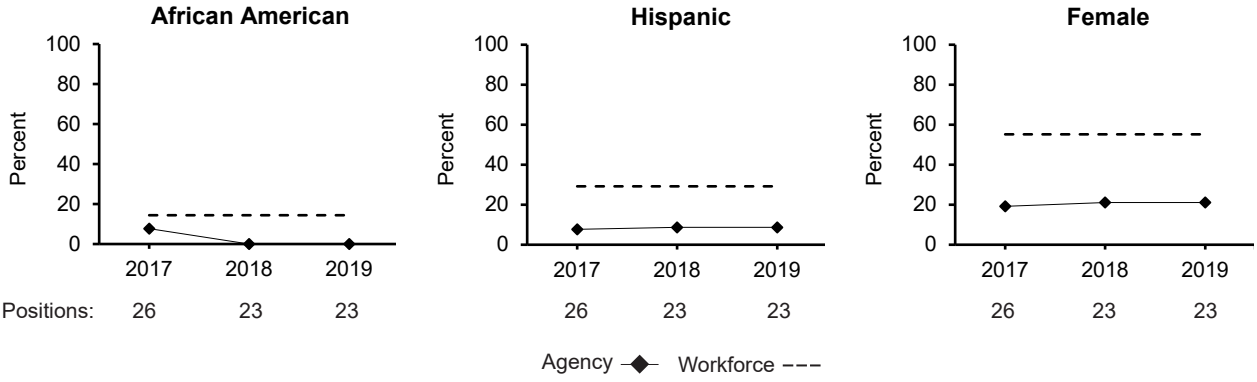
Appendix B

Professional



The agency met or exceeded the statewide percentage for African Americans, Hispanics, and females in each of the last three fiscal years, except in 2017 where it fell slightly below the statewide percentage for Hispanics.

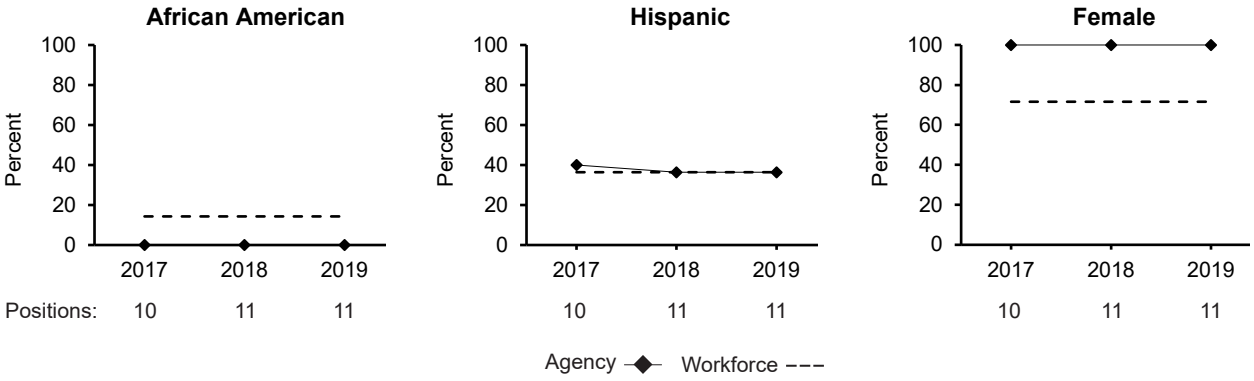
Technical



The agency fell below the statewide percentage for African Americans, Hispanics, and females in each of the last three fiscal years

Appendix B

Administrative Support



The agency had no African American employees in the administrative support category, but met or exceeded the statewide percentages for Hispanics and females in all 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 Peace Officer Course Requirements

Topic	Hours	Statute or Rule
A. Professional Police Practices	**56**	
TCOLE Rules Overview	4	R
Racial Profiling	4	S
Multiculturalism	8	R
Professionalism and Ethics	12	R
Professional Policing	12	R
Fitness, Wellness, and Stress Management	16	R
B. Constitutional Law, Criminal Law, and Criminal Justice System	**121**	
Consular Notification	1	R
Asset Forfeiture	4	S
Identity Crimes	4	S
Civil Process	4	R
Code of Criminal Procedure	8	S
U.S./Texas Constitution and Bill of Rights	10	R
Arrest, Search, and Seizure	40	S
Penal Code	50	S
C. Illegal Substances and Special Regulations	**12**	
Texas Alcoholic Beverage Code (TABC)	4	R
Health and Safety Code - Controlled Substance Act	8	R
D. Family, Children, and Victims of Crime	**23**	
Child Alert Checklist	1	S
Family Violence, Child Victims, and Related Assaultive Offenses	4	S
Missing and Exploited Children	4	S
Human Trafficking	4	S
Victims of Crime	10	S
E. Traffic Regulation	**98**	
Intoxicated Driver/Standardized Field Sobriety Testing	24	R
Traffic Code/Crash Investigation	74	S
F. Communications/Language	**48**	
Written Communications	16	R
Verbal Communication/Public Interaction	16	R

Appendix C

Topic	Hours	Statute or Rule
Spanish	16	R
G. Use of Force	**32**	
De-escalation Strategies	8	S
Force Options Theory	24	S
H. Special Populations	**42**	
Traumatic Brain Injury	2	S
Crisis Intervention Training	40	S
I. Arrest Procedures	**40**	
Arrest and Control	40	S
J. Investigations	**50**	
Juvenile Offenders	10	R
Criminal Investigation	40	S
K. Vehicle Operations	**32**	
Professional Police Driving	32	S
L. Patrol Operation	**72**	
Civilian Interaction Training	2	S
Interacting with Deaf and Hard of Hearing	4	S
Canine Encounters	4	S
Radio Communications/Amber-Silver Alerts/Texas Crime Information Center–Texas Law Enforcement Telecommunications System	16	R
Patrol Skills/Traffic Stops	46	S
M. Medical	**16**	
Emergency Medical Assistance	16	R
N. Weapons	**48**	
Firearms	48	S
O. All Hazards Training	**4**	
HAZMAT	4	R
P. End of Course Review	**2**	
Total Hours	**696**	

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 elective hours (e.g. crisis communications, ADA laws and regulations, etc.)	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	No deadline specified
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	Not later than the second anniversary of the individual's appointment; Every two years
New police chiefs	Initial training for assignment	Within one year before or one year after appointment
New constables	Initial training for assignment; Assignment-specific courses	Not later than the second anniversary of the individual's 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

Appendix D

Licensee or Job Function	Training Requirement	Deadline/Timeline	
Jail administrators	Initial training for assignment	Within 180 days of assignment	
Miscellaneous continuing education (by date)			
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, *F-5 Discharge Categories*.

F-5 Discharge Categories

Honorable Discharge
• Licensee in good standing, and • separation is not because of pending or final disciplinary actions or a documented performance problem.
General Discharge
Separation related to: • a disciplinary investigation of conduct not included in definition of dishonorable discharge, or • a documented performance problem and not because of a reduction in workforce or at-will employment decision.
Dishonorable Discharge
Terminated or resigned in lieu of termination: • 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 F-5 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.[2] A dishonorable discharge can flag questionable conduct for a potential employer. About 3 percent of almost 18,000 F-5 forms issued annually in Texas contain a dishonorable discharge.

- **F-5 appeal.** When an LEA files an F-5 form, the licensee has 30 days to file a petition with TCOLE to change the discharge category.[3] Many LEAs will not hire an individual dishonorably discharged, and some will not hire individuals with a general discharge, so licensees most often appeal those two categories. 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).[4] 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 2019, 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.[5] However, TCOLE will pursue revocation if SOAH upholds a second dishonorable discharge of a licensee.[6]

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

2 Section 1701.451, Texas Occupations Code.

3 Section 1701.4525, Texas Occupations Code.

4 Ibid.

5 Section 1701.457, Texas Occupations Code.

6 Section 1701.4521, Texas Occupations Code.

Appendix F | Staff Review Activities

During the 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:

- Interviewed members of the Texas Commission on Law Enforcement.
- Conducted surveys of current TCOLE licensees, law enforcement agencies, and TCOLE-contracted training providers to gather feedback on the commission's performance, and evaluated the responses.
- Attended webinars on law enforcement regulation and reform.
- Interviewed staff from the Department of Information Resources, Office of the Attorney General, State Office of Administrative Hearings, and Texas Commission on Jail Standards.

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

REPORT PREPARED BY

Andrew McConnell, *Project Manager*

Senaida San Miguel

Sadie Smeck

Janet Wood

Steven Ogle, *Project Supervisor*

Jennifer Jones
Executive Director

Sunset Advisory Commission

Location
Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

Mail
PO Box 13066
Austin, TX 78711

Website
www.sunset.texas.gov

Email
sunset@sunset.texas.gov

Phone
(512) 463-1300