

SUBJECT: Continuing TCOLE; creating panel to review law enforcement regulation

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 7 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales,
Patterson

2 nays — Schaefer, Tinderholt

WITNESSES: For — Brian Hawthorne, Sheriffs' Association of Texas; (*Registered, but did not testify*: Elizabeth Nezda Orr, AT&T; Guadalupe Cuellar, City of El Paso; Ben Stratmann, Dallas Regional Chamber; David Sinclair, Game Warden Peace Officers Association; Austin Holder, Texas Instruments)

Against — Jennifer Szimanski, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify*: Charley Wilkison, Combined Law Enforcement Associations of Texas; Jimmy Rodriguez, San Antonio Police Officers Association; Julie Gilberg; Linda Guy; Georgia Keysor; Gentry McClean; Vunderink)

On — Andrew McConnell, Sunset Commission; Kevin Lawrence, Texas Municipal Police Association; Jeff Garner and Brian Harvey, Texas Police Chiefs Association; (*Registered, but did not testify*: Kathy Mitchell, Just Liberty; James Smith, San Antonio Police Department; Steven Ogle, Senaida San Miguel, and Sadie Smeck, Sunset Commission; Kim Vickers, Texas Commission on Law Enforcement)

BACKGROUND: The 59th Legislature in 1965 created what is now the Texas Commission on Law Enforcement (TCOLE) to establish training and education standards for law enforcement personnel, which became mandatory for Texas peace officers in 1969. TCOLE began regulating county jailers in 1979 and began licensing telecommunicators and school marshals in 2013.

Functions. TCOLE performs certain key functions, including licensing and certifying personnel, registering new law enforcement agencies and

auditing existing agencies, developing curriculum standards for basic training and continuing education courses, and investigating complaints and taking disciplinary actions against licensees under certain circumstances for certain crimes and for violations of TCOLE statute and rules.

TCOLE licenses peace officers, county jailers, telecommunicators, and school marshals. Licenses are classified as active, appointed, or inactive. Active licensees are persons who have completed required training, passed the state licensing exam, and remain in compliance with continuing education requirements. An active licensee has to be appointed, or hired, by a law enforcement agency to perform law enforcement duties. If licensees are retired or no longer employed by an agency and do not maintain continuing education, their licenses are placed in inactive status. In fiscal 2019, TCOLE oversaw 154,659 active, 116,071 appointed, and 356,226 inactive licenses. Individuals may hold multiple licenses or appointments, so the number of individuals who hold licenses is lower than these totals.

TCOLE oversees about 2,700 law enforcement agencies, the majority of which employ 10 or fewer officers. TCOLE audits agencies at least once every five years to ensure compliance with basic recordkeeping standards.

Governing structure. TCOLE is governed by a nine-member body that consists of three members who must be sheriffs, constables, or chiefs of police; three members who must be licensees, two of whom must be peace officers in non-supervisory positions; and three members representing the public. Members are appointed by the governor and confirmed by the Senate and serve staggered six-year terms.

Funding. TCOLE operated on a budget of about \$4.2 million in fiscal 2019, with about \$3.2 million coming from the Law Enforcement Officer Standards and Education Account, which is funded partially by court fees and supports activities at TCOLE, the Comptroller of Public Accounts, and the Department of Public Safety. TCOLE also receives appropriated receipts and state and federal grants administered through the Office of the

Governor's Criminal Justice Division and can receive funds through the Texas Peace Officer Flag Account.

Staffing. In fiscal 2019, TCOLE employed 53 full-time staff, which included eight regional field service agents who audit law enforcement agencies and two evaluators who audit training providers.

TCOLE would be discontinued September 1, 2021, if not continued by the Legislature.

DIGEST:

HB 1550 would continue the Texas Commission on Law Enforcement (TCOLE) until September 1, 2023, and create a panel to study the regulation of law enforcement personnel and agencies. The bill also would require the Sunset Commission to conduct a limited-scope review of the commission for the 88th Legislature, require TCOLE to conduct criminal history record checks on license applicants, and establish a process for the emergency suspension of a license, among other provisions.

Panel to review law enforcement regulation. HB 1550 would create a panel to study the regulation of persons licensed by TCOLE and the entities authorized by law to employ them.

Members, advisory committees. The panel would consist of 17 members, including:

- nine members who were knowledgeable on criminal justice matters, including law enforcement personnel, representatives of victims' rights groups, educators, judges, and local elected officials;
- three members who represented the public, with one each appointed by the governor, the lieutenant governor, and the House speaker;
- the chairs of the Senate Committee on Criminal Justice and the House Committee on Homeland Security of Public Safety;
- the chair of the board of the Texas District and County Attorneys Association; and
- as nonvoting members, the TCOLE executive director and the

attorney general.

The governor, lieutenant governor, and House speaker each would appoint three of the nine members with knowledge on criminal justice matters. In appointing those members, each would have to appoint one representative of a rural county or small municipality and one representative of a law enforcement agency. Members would have to be appointed by September 1, 2021.

The panel could establish advisory committees to assist in its duties. Advisory committee members could include any person with knowledge or experience relevant to the study.

A member of the panel or an advisory committee would not be entitled to compensation but could be reimbursed for travel and other expenses incurred as provided by the general appropriations act.

Study. The panel would have to study and make recommendations on the regulation of persons licensed by TCOLE and entities authorized by law to employ them. In conducting the study, the panel would have to consider:

- the standards of conduct applicable to licensees;
- the education and training requirements for licensees;
- TCOLE's regulation of training programs and schools; and
- the accountability to the public of licensees and of entities authorized to employ them.

Report. By June 1, 2022, the panel would have to deliver a report on the study, including any legislative recommendations, to the governor, the lieutenant governor, the House speaker, the Legislature, and the Sunset Commission. The report could be issued only if it was adopted by a two-thirds vote of the panel's membership.

Subpoena. The panel could request and compel by a subpoena the production for inspection and copying of documents and other records

relevant to the panel's duties and the attendance of a witness for examination under oath. A subpoena could be issued throughout the state and could be served by any person designated by the panel.

The panel, acting through the attorney general, could bring an action to enforce a subpoena. The venue for an action would be in a district court in Travis County or any county in which TCOLE could conduct a hearing. The court would have to order compliance with the subpoena if it found that good cause existed to issue the subpoena.

Assistance. TCOLE would have to provide facilities and administrative support for the panel to carry out its duties.

Open government. The panel and any advisory committee would be subject to open meetings laws. The panel would have to hold a public hearing at least once a month to solicit testimony and provide information to the public on its work.

The panel and any advisory committee could meet by teleconference call, videoconference, or other similar telecommunication method. A meeting held by such a method would be subject to related requirements under open meetings laws.

Preliminary drafts of the final report and legislative recommendations, memoranda of panel members expressing opinions, formulations, or recommendations, and panel members' notes and correspondence with individuals who were not panel members would be confidential and not subject to public disclosure under the Texas Public Information Act.

Expiration. The panel would be abolished December 31, 2022.

Limited-scope review. The bill would require the Sunset Advisory Commission to conduct a limited-scope review of TCOLE for the 88th Legislature. The review would provide an update on the progress of TCOLE in implementing the bill and an evaluation of any legislative recommendations made by the panel.

Criminal history record information for license. TCOLE would have to require an applicant for a license to submit a complete and legible set of fingerprints to TCOLE or the Department of Public Safety (DPS) for the purposes of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI). TCOLE would be prohibited from issuing a license to a person who did not comply with the fingerprint requirement.

TCOLE would have to conduct a criminal history record information check of each license applicant using information provided by the individual and made available by DPS, the FBI, and any other criminal justice agency. The commission could enter into an agreement with DPS to administer the criminal history check and authorize DPS to collect related costs from each applicant.

TCOLE would have to conduct a criminal history check on each person who held a license on September 1, 2021. TCOLE could suspend the license of a person who did not comply with a request to provide information or fingerprints that would enable the commission to conduct such a check.

Examination of license holder. The bill would require TCOLE to adopt rules specifying the circumstances under which it could request that a license holder submit to a psychological or physical exam to determine whether the license holder continued to meet the standards related to psychological and emotional health and that the person did not show any trace of drug dependency or illegal drug use. If the results showed that the person did not meet the standards, TCOLE would have to suspend the person's license.

If the license holder refused to submit to the exam, TCOLE would have to issue an order requiring the person to show cause for the refusal at a hearing scheduled no later than 30 days after the notice was served.

At the hearing, the person could appear in person and by counsel and

present evidence to justify the refusal to submit to an exam. After the hearing, TCOLE would have to issue an order requiring the person to submit to an exam or withdrawing the request for the exam. Unless the request was withdrawn, TCOLE could suspend the license of a person who refused the submit to the exam.

Related records, including the identity of the person notifying TCOLE that a license holder could not meet the standards, would be confidential and not subject to public disclosure under state public information laws.

Emergency suspension. TCOLE would have to adopt rules specifying the circumstances under which it could issue an emergency order, without a hearing, to suspend a person's license for no more than 90 days after determining the person constituted an imminent threat to the public health, safety, or welfare. An order would have to specify the length of the suspension.

If an emergency order was issued without a hearing, TCOLE would have to set the time and place for a hearing to be conducted within 10 days after the order was issued. A hearing to affirm, modify, or set aside the emergency order would be conducted by the State Office of Administrative Hearings (SOAH). The order would be affirmed to the extent that good cause existed to issue the order.

TCOLE by rule could prescribe procedures for the determination and appeal of an emergency orders, including a rule allowing TCOLE to affirm, modify, or set aside a decision made by SOAH.

A proceeding would be a contested case under laws governing administrative procedure.

Complaint process. As part of TCOLE's comprehensive procedure for its complaint enforcement process, a license holder would be entitled to obtain information regarding a complaint made against the license holder, except TCOLE would not be required to provide the identity of any nontestifying complainant.

The bill also would update TCOLE's complaint process with across-the-board recommendations on complaint tracking.

Subpoena. TCOLE could request and, if necessary, compel by subpoena the production for inspection or copying of records, documents, and other evidence relevant to the investigation of an alleged violation of applicable law or a commission rule, other than a document in connection with a disciplinary matter taken by a law enforcement agency.

TCOLE, acting through the attorney general, could bring an action to enforce a subpoena against a person who failed to comply. The venue for an action would be in a district court in Travis County or any county in which TCOLE could conduct a hearing. The court would have to order compliance with the subpoena if it found that good cause existed to issue the subpoena.

Advisory committees. The bill would allow TCOLE to appoint committees to perform advisory functions as determined by the commission. A member of an advisory committee would serve at the will of TCOLE.

A member of an advisory committee who was not a member of TCOLE could not receive compensation for service on the committee but could receive reimbursement for expenses incurred in performing committee functions.

Board member training. The bill would revise board member training to adhere to across-the-board recommendations, including by expanding training program requirements and requiring the executive director to create a training manual and annually distribute it to members of the commission. Members would have to sign and submit a statement acknowledging that the member received and reviewed the manual.

The revisions to board member training would apply to a member appointed before, on, or after the bill's effective date. A member who had

completed the current training program would be required to complete only the additional training subjects added by the bill and could not vote, deliberate, or be counted as a member in attendance at a meeting held on or after December 1, 2021, until the member completed the additional training.

Other provisions. The bill would remove the requirement that the minimum standards TCOLE could establish relating to competence and reliability include moral standards.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

HB 1550 would continue the Texas Commission on Law Enforcement's (TCOLE) role of setting and enforcing minimum licensing and training standards for law enforcement personnel across the state. Texas has a continued need to regulate law enforcement; however, the regulatory model is fragmented, lacks statewide standards, and has not evolved with the changing landscape. As a result, state law enforcement regulation can no longer ensure the conduct, training, transparency, and accountability the public expects of law enforcement.

Since these gaps in regulation cannot be addressed through changes to TCOLE's operations, and rather than attempting to rush a repair of a fundamentally broken system, the bill would task a blue ribbon panel to take a comprehensive look at how the state regulates law enforcement and make recommendations to the Sunset Commission and Legislature on changes needed to protect the health, safety, and welfare of Texans and law enforcement personnel. Without addressing this fundamental misalignment, neither TCOLE nor the state as a whole can effectively license and regulate law enforcement personnel in Texas, which involves larger policy issues beyond the scope of a Sunset review.

The intent of the blue ribbon panel would be to consider many topics related to reforming public safety. Whether it is training, misconduct, investigative authority, model policies, or the agency separation process, known as the F-5 form, that need reforming, the blue ribbon panel would

review policy changes over the interim to modernize TCOLE and propose changes to be discussed and enacted by the next Legislature. The bill also would require Sunset to complete a limited-scope review of TCOLE in the next review cycle. Taking time for such a review would ensure TCOLE had the tools necessary to professionalize law enforcement and ensure the public trusted the service provided by law enforcement.

The bill still would provide for certain changes TCOLE could implement before the next legislative session to improve its efficiency and effectiveness, regardless of the outcomes of the blue ribbon panel's review, including providing for emergency suspension of a license if the person constituted an imminent threat to the public health, safety, or welfare and requiring criminal history background checks on all license applicants.

CRITICS
SAY:

By providing for a blue ribbon panel, HB 1550 in effect would delay meaningful reform until at least the next legislative session in 2023, possibly bypassing the current environment of support for public safety reforms. Texans should not have to wait two years for improved law enforcement oversight, transparency, and accountability. In addition, the panel could put additional responsibilities and burdens on TCOLE, which already suffers from insufficient funding and resources.

While the bill would provide a process for TCOLE to issue an emergency order suspending a license under certain circumstances, the bill should go a step further and expand TCOLE's authority to revoke or suspend licenses of peace officers who have committed serious acts of misconduct, rather than continuing the current practice of handling discipline at the local level.

NOTES:

The bill's author intends to offer floor amendments that would:

- include business leaders in the nine members of the panel with knowledge on criminal justice matters and revise the composition of the panel to include, as nonvoting members, the director of the Texas A&M Engineering Extension Service, the president of the

Sheriffs' Association of Texas, and the president of the Texas Police Chiefs Association;

- revise TCOLE's authority to issue a subpoena under the bill and provide a new policy and process for investigations;
- revise the information provided to an accused license holder who was the subject of a complaint; and
- change the process for requesting a psychological or physical exam under the bill.