

SUBJECT: Adopting certain Sunset recommendations for TCOLE

COMMITTEE: Homeland Security & Public Safety — committee substitute recommended

VOTE: 7 ayes — Guillen, Jarvis Johnson, Dorazio, Goodwin, Harless, Holland, Troxclair

1 nay — Bowers

1 absent — Canales

SENATE VOTE: On final passage (April 18) — 31 - 0

WITNESSES: For — Brian Hawthorne, Sheriffs' Association of Texas (*Registered, but did not testify*; Nadia Islam, City of San Antonio; Ben Stratmann, Dallas Regional Chamber; Buddy Mills, Ray Scifres, Sheriffs' Association of Texas; John Chancellor, Texas Police Chiefs Association; Linda Durnin; Scott Rubin)

Against — (*Registered, but did not testify*: TJ Patterson, City of Fort Worth)

On — Jennifer Szimanski, Combined Law Enforcement Associations of Texas; Robin Foster, Harris County Deputies' Organization Fraternal Order of Police Lodge 39; Luis Soberon, Texas 2036; John Beauchamp, Texas Commission on Law Enforcement; Mitch Landry, Texas Municipal Police Association (*Registered, but did not testify*: Andrew McConnell, Sunset Commission Staff)

BACKGROUND: Created in 1965 by the the 59th Legislature, the Texas Commission on Law Enforcement (TCOLE) was established with the mission to enforce standards to ensure that Texans are served by highly trained and ethical law enforcement, corrections, and telecommunications personnel.

Functions. TCOLE is responsible for licensing and certifying peace

officers, county jailers, telecommunicators, and school marshals, as well as developing basic training and continuing education courses. TCOLE also investigates complaints and takes disciplinary actions against licensees for certain crimes and violations of TCOLE rules, including those related to training standards. Other functions of the agency include registering new law enforcement agencies, auditing existing agencies' records, and maintaining the Texas Peace Officers' Memorial.

Governing structure. TCOLE is composed 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 must represent the public.

Funding. In fiscal 2021, TCOLE operated on a budget of \$4.2 million, with main expenditures going towards enforcement and technical assistance, including providing trainings.

Staffing. As of fiscal 2021, TCOLE employed 53 full-time staff, including 10 regional field service agents who audited law enforcement agencies and training providers throughout the state. During the 87th session, the Legislature increased TCOLE's FTE cap from 53 to 67.

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

TCOLE would be abolished on September 1, 2023, if not continued in statute.

DIGEST: CSSB 1445 would continue the Texas Commission on Law Enforcement (TCOLE) and adopt certain policy recommendations from the Sunset Advisory Commission related to standards of conduct, licensing and hiring procedures, and data collection. TCOLE would be continued until September 1, 2031.

Advisory committees. CSSB 1445 would allow TCOLE to establish advisory committees to make recommendations on programs, rules, and policies that TCOLE administered. In establishing an advisory committee under the bill, TCOLE would be required to adopt rules on:

- the purpose, role, responsibility, goals, and duration of the committee;
- the size of and quorum requirement for the committee;
- qualifications for committee membership;
- appointment procedures, terms of service, and training requirements for members;
- policies to avoid conflicts of interest by members;
- a periodic review process to evaluate the continuing need for the committee; and
- policies to ensure the committee did not violate any provisions governing open meetings, applicable to TCOLE or the advisory committee.

Subpoenas. TCOLE would be authorized to compel by subpoena the production for inspection or copying of certain records that TCOLE was entitled under state law to access and required to routinely audit that were relevant to the investigation of an alleged violation of state law governing law enforcement officers or TCOLE rule. Acting through the attorney general, TCOLE could bring an action to enforce such a subpoena against a person who failed to comply. The bill would specify the venue at which an action to enforce a subpoena could be brought as either Travis County or any county in which TCOLE could conduct a hearing. The court would be required to order compliance with the subpoena if the court found that good cause existed to issue the subpoena.

Minimum standards for law enforcement agencies. The bill would remove provisions requiring an entity that first created a law enforcement agency or police department and first began to commission, appoint, or employ officers on or after September 1, 2009, to submit certain information about the agency or department to TCOLE upon its creation. The bill would instead require TCOLE, with input from an advisory committee, to establish minimum standards with respect to the creation or continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency, including:

- a determination regarding the public benefit of creating the agency in the community;
- the sustainable funding sources for the agency; and
- the physical resources and facilities of the proposed agency available to officers, which would include certain weapons, equipment, and vehicles.

Model policies. The bill would require TCOLE to adopt certain model policies to guide procedures related to minimum standards, personnel files, examinations, hiring, and misconduct.

Examination of license holder or applicant. The bill would require TCOLE, with input from an advisory committee, to adopt a model policy prescribing standards and procedures for the medical and psychological examination of a license holder or person for whom a license was sought by a law enforcement agency to ensure the license holder or person was able to perform the duties for which the license was required. The bill would outline examinations to which the model policy would apply and requirements for employing agencies in cases of examinations ordered for just cause.

The model policy also would require the reporting to TCOLE of a license holder's failed examination, unless the license holder submitted to and successfully completed an applicable treatment program within a reasonable time, as prescribed by TCOLE.

The providing of notice by a law enforcement agency to TCOLE of a license holder's refusal to submit to an examination would not preclude the agency employing the license holder from taking disciplinary action against the license holder, including termination of the license holder's employment with the agency.

TCOLE would be required to issue an order requiring a license holder who refused to submit to an examination required by a model policy to show cause for the license holder's refusal at a hearing on the order scheduled within 30 days after the date notice was served on the license holder. The bill would establish provisions relating to the delivery of that notice, the conduct of the hearing, TCOLE's actions after the hearing, and an appeal of TCOLE's order. The bill would authorize TCOLE to suspend or otherwise restrict the license of a license holder who refused to submit to the examination unless the request was withdrawn.

Records relating to a request, order, hearing, or examination conducted under the bill, including the identity of the person notifying TCOLE that a license holder did not meet the standards required by the model policy, would be confidential and not subject to disclosure. An order issued by TCOLE regarding a license holder that was based on information obtained during an examination could only reference the statutory basis for the order and could not disclose the reason for the examination.

Minimum standards of conduct. The bill would require TCOLE to adopt a model policy prescribing minimum standards of conduct for officers. The policy would be required to prescribe minimum standards of conduct with respect to:

- pursuit of a suspect;
- arrest and control tactics;
- executing high-risk warrants; and
- conducting traffic stops, including a uniform standard for conducting a traffic stop for an offense punishable by fine only.

The model policy also would have to establish a process by which a law

enforcement agency was required to investigate alleged misconduct of an officer employed by the agency that was consistent with the model policy adopted regarding misconduct investigations and hiring procedures, and that required a law enforcement agency to report to TCOLE an officer employed by the agency found to have engaged in egregious misconduct.

The reporting of an officer's misconduct to TCOLE would not preclude the employing agency from taking disciplinary action against the officer. TCOLE could take disciplinary action against an officer for whom a report of misconduct was submitted.

TCOLE would be required to maintain a record of each report and any actions taken as a result of the report as part of the personnel files maintained in the licensing database established by the bill.

Misconduct investigation and hiring procedures. TCOLE would be required to adopt a model policy establishing procedures applicable to a law enforcement agency that was hiring a license holder and an agency that was investigating alleged misconduct by a license holder. The model policy would require a law enforcement agency to:

- initiate an appropriate investigation into alleged misconduct at the time the agency became aware of the alleged misconduct;
- complete the investigation described above in a timely manner, as prescribed by TCOLE;
- report an investigation into alleged criminal misconduct for which criminal charges were filed against the license holder to TCOLE in a timely manner after the investigation was completed;
- complete an administrative investigation of alleged misconduct and prepare and submit to TCOLE a summary report on the investigation within 30 days after the date of the license holder's separation from the agency, if applicable;
- include documentation of the completed investigation in the personnel file of the license holder maintained by the agency; and
- submit to TCOLE each report of a completed investigation.

Under the bill, the misconduct and hiring model policy also would be required to:

- provide that an investigation into the alleged misconduct of a license holder could not be terminated by the resignation, retirement, termination, death, or separation from employment of the license holder;
- specify that a license holder under investigation for misconduct would be entitled to any due process procedures provided by the investigating agency to contest the investigation or report;
- require a law enforcement agency to request and review any information regarding an applicant for employment maintained by TCOLE in the licensing status database as part of its preemployment procedures;
- establish a provisional hiring period of at least 45 days for any license holder employed by a law enforcement agency and allow an agency to terminate the license holder if information relating to alleged misconduct was made available to the agency as part of the preemployment procedures within the provisional period; and
- take into account the variation in size, function, and jurisdiction of law enforcement agencies in the state.

TCOLE would be required to maintain each report received under a misconduct and hiring model policy as part of the license holder's record in the licensing status database. The bill would require that TCOLE notify a law enforcement agency seeking to appoint a license holder of a completed investigation report concerning the license holder within five business days after TCOLE received the report.

Personnel files. CSSB 1445 would require TCOLE to adopt a model policy regarding personnel files maintained with respect to a license holder. The policy would have to require the head of a law enforcement agency or the head's designee to maintain a personnel file on each license holder employed by the agency that contained any documentation relating to:

- a relevant commendation or honor received by the license holder;
- any misconduct by the license holder if the documentation was from the employing agency and the misconduct resulted in disciplinary action by the employing agency; and
- the periodic evaluation of the license holder by a supervisor.

The policy would also be required to provide that any documentation relating to alleged misconduct by the license holder could not be placed in the license holder's personnel file if there was insufficient evidence to sustain the charge of misconduct. The policy would have to specify that, if a negative document or other notation of negative impact was included in a license holder's personnel file, the agency head or the head's designee would be required to notify the affected license holder within 30 days after the date of the inclusion and that a license holder could file a written response to the negative document on or before the 30th day after the date of receipt of the notification.

Under the model policy, information contained in a license holder's personnel file could not be released without the license holder's written permission unless required by law. A license holder would be entitled, on request, to a copy of any letter, memorandum, or document placed in the license holder's personnel file. An employing agency could charge the license holder a reasonable fee not to exceed the actual cost of any copies.

A law enforcement agency would be required to provide a license holder's personnel file to TCOLE within 30 days after the date the license holder separated from the agency, or on request by TCOLE as part of an ongoing investigation. A law enforcement agency hiring a license holder would be entitled to view the contents of the license holder's personnel file.

Except as provided by these provisions, a law enforcement agency could not release any information contained in a license holder's personnel file to any other agency or person requesting information relating to the license holder unless required by law. The agency would be required to refer the entity requesting the information to the agency head or the head's designee.

Provisions applying to all model policies. Each law enforcement agency in this state would be required to adopt the established model policies or policies that were substantively similar. The policies would have to be submitted to TCOLE, and TCOLE would be required to maintain a copy of the policies.

TCOLE would be required to adopt the model policies by March 1, 2024.

Databases. TCOLE would be required to establish and designate certain databases to maintain information on officers and officer licenses.

Licensing database. TCOLE would be required to establish a database containing, for each licensed officer, the officer's license status, including a record of any action taken against the officer by the commission, and personnel files provided by each law enforcement agency that employed the officer.

TCOLE would have to make available to a law enforcement agency on request any relevant information maintained in the database for hiring and preemployment purposes. On request of an officer, TCOLE would provide to the officer free of charge any information maintained in the database regarding the officer, including any information relating to an investigation of misconduct by a law enforcement agency. Except as provided by the bill's provisions, information maintained in the database established under this section would be confidential and not subject to disclosure.

National law enforcement database. The bill would require TCOLE to designate one or more national law enforcement databases that a law enforcement agency would be required to access to complete the required preemployment background checks. The bill would require that any designated database be as comprehensive as possible.

TCOLE would be required to designate a national database that served as a registry for the revocation of officer licenses in several jurisdictions based on misconduct committed by the officer. TCOLE would be required

to submit to the designated database any information necessary to create a record in the database for each officer license that TCOLE revoked.

Officer personal service reports database. The bill would require TCOLE to establish a public database containing personal service reports of each licensed officer. A service report would have to be compiled in a format that made the information readily available to the public and that included the following information for each officer:

- the date the officer completed the basic training course;
- whether the officer was in compliance with continuing education requirements and the continuing education courses completed;
- the total hours of training the officer had completed; and
- the date the officer's license was issued.

TCOLE would be required to adopt rules to exclude from the database personal service reports for certain officers if including the service report would create a safety risk for an undercover officer or an officer involved in an active sensitive operation. The adopted rules would have to allow an officer or the law enforcement agency employing the officer to request the service report of the officer to be excluded from the database. A request to exclude an officer's personal service report would be confidential and not subject to disclosure.

TCOLE would have to require a person accessing information in the database to register as a user before accessing the database and track each user's activity on the database, including the personal service reports the user accessed. This user information also would be confidential and not subject to disclosure, except as required to comply with a court order.

TCOLE would be required to establish and designate the databases by March 1, 2024.

Out-of-state license holders. Before issuing a license to an applicant who held or had previously held an equivalent license in another state, TCOLE would be required to request the personnel file and any other relevant

record regarding the applicant from the licensing authority of the other state. An applicant for a license could not be denied a license solely because the licensing authority of another state did not provide a record requested by TCOLE.

Revocation or suspension in another state. A person would be disqualified to be an officer, and TCOLE could not issue a license to the person, if the person had been issued a license or other authorization to act as an officer in another state and, at the time the person applied for a license in this state, that license or authorization was revoked or suspended for a reason that would be grounds for TCOLE to revoke or suspend a license in Texas.

Emergency suspension. TCOLE would be required to adopt rules specifying the circumstances under which TCOLE could issue an emergency order, without a hearing, suspending a person's license for a maximum period of 90 days after determining that the person constituted an imminent threat to the public health, safety, or welfare. An order suspending a license would need to state the length of the suspension in the order.

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

TCOLE could prescribe procedures for the determination and appeal of an emergency order, including a rule allowing TCOLE to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings. The bill would specify that a proceeding under the bill's provisions was a contested case.

Other provisions. CSSB 1445 would repeal provisions requiring a law

enforcement agency to include on an employment termination report a statement on whether the license holder was discharged generally, honorably, or dishonorably and an explanation of the circumstances under which the person resigned, retired, or was terminated. Provisions governing a license suspension for an officer who was dishonorably discharged and petitions for the correction of an employee termination report would be repealed.

The bill would clarify that, except with respect to an officer elected under the Texas Constitution, TCOLE would be required to revoke or suspend a law enforcement agency's authority to employ a license holder, place on probation an agency whose authority to employ a license holder had been suspended, or reprimand a law enforcement agency for a violation of state law, certain reporting requirements, or TCOLE rules.

The bill also would require a law enforcement agency, before hiring a licensed officer, to submit to TCOLE confirmation that the agency obtained and reviewed any misconduct investigation reports maintained by TCOLE with regards to the licensed officer as well as information on the person's law enforcement background as available through the law enforcement database and, if applicable, a file or record obtained by TCOLE for an officer licensed in another state.

License application. Before a law enforcement agency or governmental entity hired a person for whom a license was sought, the agency or entity would be required, in addition to filing an application with TCOLE, to review any information relating to the person in the licensing status database, law enforcement database, and any applicable file provided to TCOLE if the person was licensed in another state.

The bill would revise requirements for a person who appointed a licensed officer, county jailer, or telecommunicator who had previously served in that position if the appointment occurred more than 180 days after the license holder's last date of service. In addition to new criminal history record information and new declarations of health for the license holder, the person would be required to have on file in a form readily accessible

to TCOLE, new documentation that the license holder had been fingerprinted and subjected to a search of local, state, and national records and fingerprint files to disclose any criminal record of the license holder, rather than two completed fingerprint cards.

Training. The bill would revise officer training requirements to specify that a training program must provide a person with information regarding the law governing certain commission operations rather than the legislation that created TCOLE. This information would be required to include the scope of and limitations on TCOLE's rulemaking authority and the requirements of other laws applicable to members of a state policy-making board in performing their duties.

The bill would require TCOLE's executive director to create a training manual that included the required training information and to distribute a copy of the training manual annually to each TCOLE member. Each member would be required to sign and submit to the executive director a statement acknowledging that the member received and reviewed the training manual.

Deadlines for officer training. The bill would remove provisions establishing deadlines for officers to complete certain minimum curriculum requirements and instead require TCOLE to adopt rules establishing deadlines for an officer to complete any minimum curriculum requirements that were not completed as part of the officer's basic training course.

Complaints. The bill would specify that TCOLE would not be required to provide the identity of any non-testifying complainant in response to a license holder's request. The bill also would specify that TCOLE would not be required to periodically notify the complaint parties of the status of a complaint if the notice would jeopardize an investigation.

Definitions. "Misconduct" would be defined as a violation of law, a violation of a law enforcement agency policy for which the agency could suspend, demote, or terminate a license holder's employment, or an

allegation of untruthfulness against a license holder.

TCOLE would be required to adopt rules and update form as necessary to implement the changes made by the bill by March 1, 2024.

The bill would take effect September 1, 2023.

**SUPPORTERS
SAY:**

CSSB 1445 would improve effectiveness of the Texas Commission on Law Enforcement (TCOLE) by increasing state-wide standards for professionalism, training, and accountability for law enforcement agencies and officers in Texas. The model policies required to be adopted by TCOLE and law enforcement agencies under the bill would set clear expectations of appropriate conduct for licensees and would create a more consistent and fair basis to evaluate the actions of licensees. Imposing statewide minimum standards also would provide a level of protection from liability for law enforcement by instituting a clear benchmark for acceptable actions.

Given the diverse group of stakeholders TCOLE impacts, the commission would benefit from statutory authority to formally establish advisory committees in rule. The bill would allow TCOLE to establish advisory committees in areas where TCOLE staff needed more expertise, such as mental health and new technologies. This would allow TCOLE to receive recommendations from knowledgeable experts on how to best serve their officers and the public as the field of law enforcement continues to change.

The bill would remove provisions governing standardized categories allowing agencies to designate whether an officer was discharged generally, honorably, or dishonorably, which has proven to be an unreliable metric for hiring agencies in measuring the quality of candidates. "Honorable" designations often provide hiring agencies with inaccurate implications regarding an officer's employment history when, in fact, many "dishonorable discharge" designations are appealed and amended to "honorable." Additionally, a dishonorable discharge is not necessarily the result of misconduct, and this designation can lead hiring

agencies to reject otherwise qualified candidates. The bill would help hiring agencies to better examine a candidate's full personnel file before making a decision, which would increase transparency regarding the candidate's past and thoroughness in hiring practices.

The bill would require LEAs to check a national law enforcement database prior to hiring or granting a license to a law enforcement officer and would authorize TCOLE to designate one or more databases for use by law enforcement agencies when conducting pre-employment background checks. The use of these databases would improve law enforcement hiring and separation practices by ensuring that only upstanding quality candidates were considered for officer positions.

CSSB 1445 would clearly define TCOLE's authority in certain areas, strengthening oversight for LEAs state-wide. TCOLE would be authorized to issue administrative subpoenas, which would ensure TCOLE had access to information needed to effectively investigate licensing matters and make appropriate decisions on possible enforcement actions. TCOLE also would have the authority to maintain confidentiality of complaints when possible. Protecting complainants' identities would reduce the fear of retaliation that could otherwise stifle legitimate complaints and would protect LEAs from accusations of retribution.

**CRITICS
SAY:**

CSSB 1445 would eliminate an important tool in hiring quality licensed officers by removing the required statement on the employment termination form regarding whether an officer was discharged generally, honorably, or dishonorably. Removing this designation could worsen the state's "wandering officer" problem by allowing more officers who were fired or dishonorably discharged to seek employment at other agencies that did not have access to the officer's termination information. The current discharge designations and related statute provide a concise, standardized report of an officer's history as well as provisions for due process for licensees. Eliminating this resource and requiring law enforcement agencies to conduct an exhaustive examination of each officer's background documents could create an additional burden on hiring agencies and extend hiring timelines for agencies in Texas, many of

which are facing staffing shortages. Without the ability for agencies to designate how an officer was discharged, there would be no other provision in statute that required an agency to document how an officer separated from the agency.

NOTES:

According to the Legislative Budget Board, CSSB 1445 would have a negative impact on general revenue related funds of \$5,583,827 through fiscal 2024-25.