

## **BILL ANALYSIS**

C.S.S.B. 1445  
By: Paxton  
Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Sunset Advisory Commission reviewed the Texas Commission on Law Enforcement (TCOLE) during the 2020-2021 sunset review cycle, but the corresponding sunset bill continuing TCOLE, H.B. 1550, did not pass. Instead, the legislature continued TCOLE for an additional two years under S.B. 713 and directed the sunset commission to conduct a limited scope review of TCOLE during the 2022-2023 review cycle.

The sunset commission once again found that the state's approach to law enforcement continues to lag behind the needs of the state. The sunset commission recommended continuing TCOLE for 12 years and adopted several recommendations to improve the efficiency and effectiveness of law enforcement regulation in Texas, including aligning TCOLE's statutes and procedures with best practices. More specifically, the sunset commission recommended requiring TCOLE to set and enforce minimum standards for law enforcement agencies, recommended requiring law enforcement agencies to access a national law enforcement database before hiring, and recommended eliminating discharge categories from the F-5 separation form.

C.S.S.B. 1445 seeks to continue TCOLE until 2031 with several statutory modifications aimed at addressing recommendations from the sunset commission.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Law Enforcement in SECTIONS 5, 6, 9, 10, 21, and 24 of this bill.

### **ANALYSIS**

C.S.S.B. 1445 amends the Occupations Code to continue the Texas Commission on Law Enforcement (TCOLE) under the Texas Sunset Act until September 1, 2031. The bill also revises and updates TCOLE's powers and duties as detailed below.

#### **Advisory Committees**

C.S.S.B. 1445 authorizes TCOLE by rule to establish advisory committees to make recommendations to TCOLE on programs, rules, and policies administered by TCOLE. In establishing an advisory committee, TCOLE must adopt rules, including rules regarding:

- 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 for members;
- terms of service for members;
- training requirements for members;
- policies to avoid conflicts of interest by committee members;
- a periodic review process to evaluate the continuing need for the committee; and
- policies to ensure the committee does not violate any provision of state open meetings law applicable to TCOLE or the committee.

### **Definition of "Misconduct"**

C.S.S.B. 1445 defines "misconduct" for purposes of state law providing for TCOLE's regulation of law enforcement personnel as a violation of law or any of the following that have been sustained by a law enforcement agency employing a person holding a TCOLE-issued license (license holder):

- a violation of a law enforcement agency policy for which the agency may suspend, demote, or terminate the employment of a license holder; or
- an allegation of untruthfulness against a license holder.

### **Minimum Standards for Law Enforcement Agencies**

C.S.S.B. 1445 removes the provisions requiring an entity that first creates a law enforcement agency or police department under the authority of state law or the Texas Constitution and first begins to commission, appoint, or employ officers on or after September 1, 2009, to submit certain information about the agency or department to TCOLE on creation of the agency or department. The bill requires TCOLE instead, with input from an advisory committee, to adopt rules establishing 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 and sets out certain required areas for TCOLE to develop minimum standards. With respect to how the required minimum standards differ from the information that the entities establishing new law enforcement agencies or police departments were previously responsible for reporting to TCOLE:

- the bill replaces the previous requirement to report the need for the agency or department in the community with a requirement for the minimum standards to include standards for a determination regarding the public benefit of creating the agency in the community;
- the bill replaces the previous requirement to submit information regarding funding sources for the agency or department with a requirement for the minimum standards to include standards for sustainable funding sources for the agency;
- the bill requires minimum standards to include standards for physical resources available to officers, which is substantially the same as the previous requirement to submit information regarding those available resources, but further specifies that the minimum standards must specifically include the following physical resources:
  - all standard duty firearms;
  - less lethal force weapons, including a requirement of at least one per officer on duty;
  - effective communications equipment;
  - protective equipment, including a requirement of at least one bullet-resistant vest per officer on duty;
  - officer uniforms; and
  - patrol vehicles and associated equipment;
- the bill requires the minimum standards to include standards regarding the following, all of which are substantially the same as information previously required to be submitted:
  - the agency's physical facilities, including any evidence room, dispatch area, or public area;
  - the agency's administrative structure; and
  - liability insurance;

- the bill requires the minimum standards to include standards regarding the agency's policies, including certain specified policies, which is substantially the same as the previous requirement to submit information on those policies, but includes as additional policies regarding which minimum standards must be adopted policies on active shooters and barricaded subjects; and
- the bill replaces the requirement to report any other information TCOLE requires by rule with a requirement for the minimum standards to include any other standard TCOLE considers necessary.

### **Policy Regarding Fit For Service Examinations**

C.S.S.B. 1445 requires TCOLE, not later than March 1, 2024, and 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 an applicable TCOLE-issued license is sought by a law enforcement agency to ensure the license holder or person is able to perform the duties for which the applicable license is required. The model policy must, as follows:

- apply to examinations of:
  - a person seeking a license from TCOLE;
  - a person licensed as an officer or county jailer who is appointed as an officer or county jailer after the 180th day after the person's last date of service as an officer or county jailer;
  - school marshals; and
  - a license holder, if ordered by the law enforcement agency employing the license holder for just cause;
- require, for an examination ordered for just cause, that the employing agency:
  - provide to the license holder written notice of the examination that includes the reasons for the examination not later than the 10th business day before the deadline to submit to the examination; and
  - report to TCOLE, in the manner prescribed by TCOLE, the refusal of the license holder to submit to the examination within the period provided; and
- require the reporting to TCOLE, in the manner prescribed by TCOLE, of a license holder's failed examination, unless the license holder submits to and successfully completes an applicable treatment program within a reasonable time, as prescribed by TCOLE.

The bill requires each law enforcement agency in Texas to adopt the model policy or a substantively similar policy and requires that the policy adopted by a law enforcement agency be submitted to TCOLE, which in turn must maintain a copy of the policy. The bill requires TCOLE, not later than March 1, 2024, to establish a date by which each agency in Texas must adopt their policy. The bill establishes that a law enforcement agency's provision of notice to TCOLE of a license holder's refusal to submit to an examination does not preclude the agency employing the license holder from taking disciplinary action against the license holder, including termination of employment.

C.S.S.B. 1445 requires TCOLE to suspend the license of a license holder whose examination results show that they do not meet the standards of the adopted policy. If a license holder refuses to submit to an examination as required by a law enforcement agency's adopted policy, TCOLE must issue an order requiring the license holder to show cause for that refusal at a hearing on the order scheduled for not later than the 30th day after the date notice is served on the license holder. The bill sets out provisions relating to the provision of that notice, the conduct of the hearing, TCOLE's actions after the hearing, and an appeal of TCOLE's order and authorizes TCOLE to suspend or otherwise restrict the license of a license holder who refuses to submit to the examination unless the request is withdrawn. The bill makes records relating to a request or order or a hearing or examination, including, if applicable, the identity of the person notifying TCOLE that a license holder may not meet the requisite standards, confidential and exempt from disclosure under state public information law. An order issued by TCOLE that is based on

information obtained during the examination may only reference the statutory basis for the order and may not disclose the reason for the examination.

### **Licensing Status Database**

C.S.S.B. 1445 requires TCOLE, not later than March 1, 2024, to establish a database containing the following for each peace officer or reserve law enforcement officer licensed by TCOLE:

- the officer's license status, including a record of any action taken against the officer by TCOLE; and
- personnel files provided by each law enforcement agency that employs the officer.

The bill requires TCOLE to make available to a law enforcement agency on request any relevant information maintained in the database for purposes of fulfilling its duties in the hiring and preemployment processes. On request of an officer, TCOLE must 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 under the agency's misconduct investigation and hiring procedures policy. Except as provided by these provisions, information maintained in the database is confidential and exempt from disclosure under state public information law.

### **National Law Enforcement Database**

C.S.S.B. 1445 requires TCOLE, not later than March 1, 2024, to designate one or more national law enforcement databases that a law enforcement agency must access to complete the requisite preemployment background checks. The bill requires such a database to be as comprehensive as possible.

### **Out-of-State License Holders**

C.S.S.B. 1445 requires TCOLE, before issuing an officer license to an applicant who holds or previously held an equivalent license in another state, to request from the licensing authority of the other state the personnel file and any other relevant record regarding the applicant. The bill prohibits the applicant from being denied a license for the sole reason that the licensing authority of another state did not provide a record requested by TCOLE. These provisions apply only with respect to a person hired on or after March 1, 2024.

C.S.S.B. 1445 disqualifies a person from being an officer, and prohibits TCOLE from issuing an officer license to the person, if the person has been issued a license or other authorization to act as an officer in another state and, at the time the person applies for a license in Texas, that license or authorization is revoked or suspended for a reason that would be grounds for TCOLE to revoke or suspend a license in Texas. These provisions apply only to an application for an officer license submitted on or after the bill's effective date.

### **License Application; Duties of Appointing Entity**

C.S.S.B. 1445 requires a law enforcement agency or governmental entity, before hiring a person for whom a license is sought from TCOLE, to review any information relating to the person that is available in the licensing status database, a designated national law enforcement database, and, if applicable, in an out-of-state personnel file provided to TCOLE. The bill replaces the requirement for a person appointing as a peace officer or reserve law enforcement officer or as a county jailer an individual who previously served as such to have on file in a form readily accessible to TCOLE two completed fingerprint cards if the appointment occurs after the 180th day after the last date of service as a peace officer or reserve law enforcement officer or county jailer with the requirement for the person to have on file new documentation that the license holder has 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. The bill makes the same change with respect to a person who appoints or employs as a telecommunicator an individual

who previously served as such after the 180th day after the last date of service as a telecommunicator. These provisions apply only with respect to a person hired on or after March 1, 2024.

### **Preemployment Procedure**

C.S.S.B. 1445 includes among the information a law enforcement agency must submit to TCOLE before hiring a license holder confirmation that the agency, to the best of its ability, obtained and reviewed misconduct investigation reports maintained by TCOLE, any information on the person's law enforcement background as available through a designated national law enforcement database and, if applicable, a file or record obtained by TCOLE from an out-of-state licensing authority. These provisions apply only with respect to a person hired on or after March 1, 2024.

### **Submission of Revoked License to National Database**

C.S.S.B. 1445 requires TCOLE, not later than March 1, 2024, to designate a national database that serves as a registry for the revocation of officer licenses in several jurisdictions based on misconduct committed by the officer and to submit to the designated database information necessary to create a record in the database for each officer license TCOLE revokes as part of a TCOLE disciplinary action, for a felony conviction, or for a barratry conviction.

### **Standards of Conduct**

C.S.S.B. 1445 requires TCOLE, not later than March 1, 2024, to adopt a model policy prescribing minimum standards of conduct for peace officers and reserve law enforcement officers. The policy must, as follows:

- 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;
- establish a process by which a law enforcement agency must investigate alleged misconduct of an officer employed by the agency that is consistent with the model policy adopted regarding misconduct investigations and hiring procedures; and
- require a law enforcement agency to report to TCOLE an officer employed by the agency found to have engaged in egregious misconduct as determined by TCOLE.

The bill requires each law enforcement agency in Texas to adopt the model policy or a substantively similar policy and requires a policy adopted by a law enforcement agency to be submitted to TCOLE, which in turn must maintain a copy of the policy. The bill requires TCOLE, not later than March 1, 2024, to establish a date by which each agency must adopt their policy.

C.S.S.B. 1445 establishes that reporting by a law enforcement agency to TCOLE of an officer's misconduct does not preclude the agency employing the officer from taking disciplinary action against the officer. The bill authorizes TCOLE to take disciplinary action in accordance with applicable state law against an officer for whom a report of misconduct is submitted to TCOLE and requires TCOLE to maintain a record of each report submitted to TCOLE and any actions taken by TCOLE as a result of the report as part of the personnel files maintained in the licensing database.

### **Officer Personal Service Reports**

C.S.S.B. 1445 requires TCOLE, not later than September 1, 2024, to establish a public database containing personal service reports of each licensed peace officer or reserve law enforcement

officer. A service report must be compiled in a format that makes the information readily available to the public and must include the following information with respect to each officer:

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

C.S.S.B. 1445 requires TCOLE 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 bill requires that the rules allow such an officer or the law enforcement agency employing the officer to request, in a manner prescribed by TCOLE, the service report of the officer to be excluded from the database. The bill makes such a request confidential and exempt from disclosure under state public information law.

C.S.S.B. 1445 requires TCOLE to require a person accessing information in the database to register as a user before accessing the database and to track each user's activity on the database, including the personal service reports the user accesses. The bill makes any user information collected and maintained by TCOLE as a result of that requirement confidential and exempt from disclosure under state public information law, except as required to comply with a court order.

### **Personnel File**

C.S.S.B. 1445 requires TCOLE, not later than March 1, 2024, to adopt a model policy regarding personnel files maintained with respect to a license holder. The policy must, as follows:

- 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 contains any letter, memorandum, or document relating to:
  - a commendation, congratulation, or honor bestowed on the license holder by a member of the public or by the employing agency for an action, duty, or activity that relates to the license holder's official duties;
  - any misconduct by the license holder if the letter, memorandum, or document is 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; and
- provide that:
  - a letter, memorandum, or document relating to alleged misconduct by the license holder may not be placed in the license holder's personnel file if the employing agency determines that there is insufficient evidence to sustain the charge of misconduct;
  - if a negative letter, memorandum, document, or other notation of negative impact is included in a license holder's personnel file:
    - the agency head or the head's designee must, not later than the 30th day after the date of the inclusion, notify the affected license holder by certified mail; and
    - the license holder may, on or before the 30th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document, or other notation;
  - information contained in a license holder's personnel file may not be released without the license holder's written permission, unless the release is required by law; and
  - a license holder is entitled, on request, to a copy of any letter, memorandum, or document placed in the license holder's personnel file and an employing agency

may charge the license holder a reasonable fee not to exceed the actual cost of any such copies.

The bill requires a law enforcement agency to adopt the model policy or a substantively similar policy and requires the policy adopted by a law enforcement agency to be submitted to TCOLE, which in turn must maintain a copy of the policy. The bill requires TCOLE, not later than March 1, 2024, to establish a date by which each agency must adopt their policy.

C.S.S.B. 1445 prohibits a law enforcement agency from releasing 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 and requires the agency to refer the person or agency requesting the information to the agency head or the head's designee. However, the bill requires a law enforcement agency to provide a license holder's personnel file to TCOLE not later than the 30th day after the date the license holder separates from the agency or on request by TCOLE as part of an ongoing investigation relating to the license holder. Moreover, the bill entitles a law enforcement agency hiring a license holder to view the contents of the license holder's personnel file.

### **Misconduct Investigation and Hiring Procedures**

C.S.S.B. 1445 requires TCOLE, not later than March 1, 2024, to adopt a model policy establishing procedures applicable to a law enforcement agency investigating alleged misconduct by a license holder employed by the agency and an agency hiring a license holder. The policy must, as follows:

- require a law enforcement agency to take the following actions:
  - initiate an appropriate administrative or criminal investigation into alleged misconduct of a license holder employed by the law enforcement agency at the time the agency becomes aware of the alleged misconduct;
  - complete such an investigation in a timely manner, as prescribed by TCOLE;
  - report an investigation into alleged criminal misconduct for which criminal charges are filed against the license holder to TCOLE in a timely manner after the investigation is completed;
  - complete an administrative investigation of alleged misconduct and prepare and submit to TCOLE a summary report on the investigation, including the disposition of the investigation and any informational findings, in a format prescribed by TCOLE, in a timely manner but not later than the 30th day 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;
- provide that an investigation into the alleged misconduct of a license holder may 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 is entitled to any internal due process procedures provided by the investigating agency to contest the investigation or completed 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 the statutorily prescribed preemployment procedures;
- establish a provisional hiring period of at least 45 days for any license holder employed by a law enforcement agency and allow a law enforcement agency to terminate the employment of the license holder if information relating to an investigation of alleged misconduct by the license holder is made available to the agency by TCOLE as part of the statutorily prescribed preemployment procedures within the provisional period; and
- take into account the variation in size, function, and jurisdiction of law enforcement agencies in Texas.

The bill requires a law enforcement agency to adopt the model policy or a substantively similar policy and requires the policy adopted by a law enforcement agency to be submitted to TCOLE, which in turn must maintain a copy of the policy. The bill requires TCOLE, not later than March 1, 2024, to establish a date by which each agency must adopt their policy. The bill requires TCOLE to maintain each report received under an adopted policy as part of the license holder's record in the licensing status database. The bill requires TCOLE to notify a law enforcement agency seeking to appoint a license holder of a completed investigation report submitted to TCOLE with respect to the license holder not later than the fifth business day after the date TCOLE receives the report.

### **Disciplinary Action Against Law Enforcement Agency**

C.S.S.B. 1445 requires TCOLE, except with respect to an officer elected under the Texas Constitution, 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 has been suspended, or reprimand a law enforcement agency for a violation of any of the following:

- state law providing for TCOLE's regulation of law enforcement personnel;
- a TCOLE rule; or
- Code of Criminal Procedure provisions establishing reporting requirements pertaining to racial profiling and motor vehicle stops in which a ticket, citation, or warning is issued or an arrest is made.

These provisions apply only to conduct that occurs on or after the bill's effective date.

### **Emergency Suspension**

C.S.S.B. 1445 requires TCOLE to adopt rules specifying the circumstances under which it may issue an emergency order, without a hearing, suspending a license holder's license for a period not to exceed 90 days after determining that the license holder constitutes an imminent threat to the public health, safety, or welfare. With respect to such an order, the bill provides the following:

- the order must state the length of the suspension in the order;
- if the order is issued without a hearing, not later than the 10th day after issuing the order, TCOLE must set the time and place for a hearing on the order, which must be conducted as soon as practicable;
- a hearing to affirm, modify, or set aside an order must be conducted by the State Office of Administrative Hearings (SOAH);
- an order must be affirmed by SOAH to the extent that good cause existed to issue the order;
- TCOLE may prescribe procedures by rule for the determination and appeal of an emergency order, including a rule allowing TCOLE to affirm, modify, or set aside a SOAH decision on the order; and
- a proceeding under these provisions is a contested case under the Administrative Procedure Act.

### **Complaints**

C.S.S.B. 1445 clarifies a license holder is entitled to obtain information regarding a complaint made against the license holder. The bill specifies that, when providing requested complaint information to a license holder subject to the complaint, TCOLE is not required to provide the identity of any nontestifying complainant. The bill excepts TCOLE from the requirement to periodically notify the complaint parties of the status of a complaint until final disposition if the notice would jeopardize an investigation.

### **Deadlines for Officer Training**

C.S.S.B. 1445 removes provisions establishing deadlines for peace officers and reserve law enforcement officers to complete various components of the minimum curriculum requirements



for those officers and requires TCOLE instead to adopt rules establishing deadlines for an officer to complete any minimum curriculum requirements that are not completed as part of the officer's basic training course.

### **F-5 Separation Form**

C.S.S.B. 1445 repeals provisions providing for the designation on an employment termination report regarding whether the person was discharged generally, honorably, or dishonorably and further providing for the following:

- the suspension of an officer's license on notification that the officer has been dishonorably discharged a second time and the potential revocation or reinstatement of the license; and
- a petition and hearing process for the correction of such a report.

This change applies only to a report regarding a separation that occurs on or after March 1, 2024.

### **TCOLE Subpoena Power**

C.S.S.B. 1445 authorizes TCOLE to compel by subpoena the production for inspection or copying of certain records TCOLE is entitled under state law to access and required to routinely audit if the record is relevant to the investigation of an alleged violation of state law providing for TCOLE's regulation of law enforcement personnel or a TCOLE rule. The bill authorizes TCOLE, acting through the attorney general, to bring an action to enforce the subpoena and establishes that venue for the action is in a district court in Travis County or any county in which TCOLE may conduct a hearing. On finding that good cause exists to issue the subpoena, the court must order compliance with the subpoena.

### **TCOLE Training Requirements**

C.S.S.B. 1445 updates TCOLE member training requirements to apply certain of the Sunset Advisory Commission's across-the-board recommendations and provides for the transition to the new requirements for members serving before the bill's effective date.

### **Licensing Standards**

C.S.S.B. 1445 removes the authorization for TCOLE to establish minimum moral standards for licensing as a peace officer or reserve law enforcement officer, county jailer, public security officer, or telecommunicator.

### **General Provisions; Repealers**

C.S.S.B. 1445 requires TCOLE, not later than March 1, 2024, to adopt rules and update forms as necessary to implement the bill's provisions.

C.S.S.B. 1445 repeals the following provisions of the Occupations Code:

- Sections 1701.452(b) and (c);
- Section 1701.4521; and
- Section 1701.4525.

### **EFFECTIVE DATE**

September 1, 2023.

## **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1445 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

### **Definition of "Misconduct"**

Whereas the engrossed defined "misconduct" as a violation of law or of a law enforcement agency policy by a license holder for which the law enforcement agency employing the license holder may take disciplinary action, the substitute defines "misconduct" as a violation of law or any of the following that have been sustained by a law enforcement agency employing a license holder:

- a violation of a law enforcement agency policy for which the agency may suspend, demote, or terminate a license holder's employment; or
- an allegation of untruthfulness against a license holder.

### **Minimum Standards for Law Enforcement Agencies**

The substitute revises the provision in the engrossed requiring TCOLE, with the input from an advisory committee, to establish by rule minimum standards with respect to the creation or operation of a law enforcement agency by requiring that the minimum standards be based on the function, size, and jurisdiction of the agency and by specifying that the standards are for both the creation or continued operation of the agency. With respect to the specific minimum standards the bill requires TCOLE to adopt, the substitute makes the following changes to the engrossed:

- regarding the requirement in the engrossed for the minimum standards to include standards on a determination regarding the need for and public benefit of creating the agency in the community, the substitute omits the language relating to the need for the agency; and
- regarding the requirement in the engrossed for the minimum standards to include standards on the physical resources available to officers, the substitute, conforming to the inclusion of the requirement that the minimum standards be based on the function, size, and jurisdiction, omits language in the engrossed allowing the standards on physical resources to differ based on the size of the agency and, with respect to specific resources:
  - replaces the requirement in the engrossed for these standards to include duty firearms, including patrol rifles and shotguns, with a requirement that they include all standard duty firearms; and
  - replaces the requirement in the engrossed for these standards to include a requirement of at least one protective vest per officer on duty with a requirement that they include a requirement of at least one bullet-resistant vest per officer on duty.

### **Policy Regarding Examination of License Holder or Applicant**

The engrossed and the substitute each provide for the development of a model policy prescribing standards and procedures for the medical and psychological examination of a license holder to ensure the license holder is able to perform the duties for which the license is required. However, the substitute also provides for the model policy to apply to a person for whom a license is sought by a law enforcement agency. Moreover, the substitute includes specifications regarding the examinations to which the model policy must apply, which were absent from the engrossed.

In addition, whereas the engrossed included a standalone requirement for a law enforcement agency that employs a license holder who refuses to submit to an examination as required by the agency's adopted policy to notify TCOLE of the refusal, the substitute does not. Instead, the

substitute sets out content requirements for the model policy, none of which were included in the engrossed, that include a requirement for the model policy to, as follows:

- require, for an examination ordered for just cause, that the employing agency:
  - provide to the license holder written notice of the examination that includes the reasons for the examination not later than the 10th business day before the deadline to submit to the examination; and
  - report to TCOLE, in the manner prescribed by TCOLE, the refusal of the license holder to submit to the examination within the period provided; and
- require the reporting to TCOLE, in the manner prescribed by TCOLE, of a license holder's failed examination, unless the license holder submits to and successfully completes an applicable treatment program within a reasonable time, as prescribed by TCOLE.

The substitute includes a provision not in the engrossed establishing that the providing of notice by a law enforcement agency to TCOLE of a license holder's refusal to submit to an examination does not preclude the agency employing the license holder from taking disciplinary action against the license holder, including termination of employment.

### **Submission of Revoked License to National Database; Standards of Conduct**

The substitute includes provisions absent from the engrossed regarding the submission of a revoked license to a national database designated by TCOLE and relating to the development and adoption of policies relating to officer standards of conduct.

### **Officer Personal Service Reports**

The substitute revises provisions in the engrossed regarding the establishment of a public database containing officer personnel service reports to replace references to personnel service reports with references to personal service reports. Moreover, whereas the engrossed required TCOLE to adopt rules to exclude from the database reports for certain officers if including the report would create a safety risk for the officer based on the officer's position or duties, including reports of undercover officers and officers involved in active narcotics operations, the substitute requires TCOLE to adopt rules to exclude from the database reports for certain officers only if including the report would create a safety risk for an undercover officer or an officer involved in an active sensitive operation. The substitute provides for either the officer in question or their employing agency to request that a service report of the officer be excluded from the database, whereas the engrossed provided only for an employing agency to make such a request. Lastly, whereas the engrossed made both an excluded service report and a request to exclude a service report confidential and exempt from disclosure under state public information law, the substitute limits this provision only to the request for exclusion. However, the substitute includes provisions not in the engrossed that, as follows:

- require TCOLE to do the following:
  - 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 service reports the user accesses; and
- make such user information collected and maintained by TCOLE confidential and exempt from disclosure under state public information law, except as required to comply with a court order.

### **Out-of-State License Holders**

The substitute includes a provision absent from the engrossed disqualifying a person from being an officer, and prohibiting TCOLE from issuing an officer license to the person, if the person has been issued a license or other authorization to act as an officer in another state and, at the time the person applies for a license in Texas, that license or authorization is revoked or

suspended for a reason that would be grounds for TCOLE to revoke or suspend a license in Texas.

### **Misconduct Investigation and Hiring Procedures**

The substitute revises the requirements set out in the engrossed for the contents of the model policy for misconduct investigations and hiring procedures as follows:

- whereas the engrossed required that the policy require a law enforcement agency to conduct and complete an appropriate criminal or administrative investigation into any alleged misconduct of a license holder employed by the agency at the time of the alleged misconduct, the substitute requires an agency to initiate such an investigation into alleged misconduct of a license holder employed by the agency at the time the agency becomes aware of the alleged misconduct and to complete the investigation in a timely manner, as prescribed by TCOLE;
- whereas the engrossed required that the policy require a law enforcement agency to report a criminal investigation into alleged misconduct to TCOLE in a timely manner after the investigation is commenced, the substitute requires that the notice be provided in a timely manner after the investigation is completed and only if the investigation leads to criminal charges being filed against the license holder;
- with respect to the requirement in the engrossed for the policy to require a law enforcement agency to complete an administrative investigation of alleged misconduct and prepare and submit to TCOLE a report on the investigation in a timely manner but not later than the 10th business day after the date of the license holder's separation from the agency, if applicable:
  - the substitute includes a specification absent from the engrossed that the report required is a summary report;
  - the substitute includes a requirement absent from the engrossed for the report submitted to include the disposition of the investigation and any informational findings, in a format prescribed by TCOLE; and
  - the substitute changes the deadline for the report to be submitted after the date of separation, if applicable, to the 30th day thereafter, rather than the 10th business day thereafter as in the engrossed;
- whereas the engrossed required that the policy establish a provisional hiring period of 30 days, the substitute requires that the policy establish a provisional hiring period of at least 45 days; and
- the substitute includes a requirement not in the engrossed for the policy to take into account the variation in size, function, and jurisdiction of law enforcement agencies in Texas.

The substitute requires TCOLE to notify a law enforcement agency seeking to appoint a license holder of a completed investigation report submitted to TCOLE with respect to the license holder not later than the fifth business day after the date TCOLE receives the report. The engrossed did not contain this requirement.

### **Personnel File**

The substitute includes provisions not in the engrossed providing for the development and adoption of policies regarding personnel files maintained with respect to a license holder.

### **Licensing Status Database**

Both the engrossed and the substitute include provisions requiring the licensing status database to include personnel files provided by each law enforcement agency that employs the officer. However, whereas the engrossed required these files to include a record of any investigation into alleged misconduct and any disciplinary action taken against the officer by the agency, the substitute does not. However, the substitute includes a cross-reference that conforms to the inclusion in the substitute of those aforementioned provisions regarding personnel files, which

contain a requirement for the policy adopted regarding the maintenance of personnel files to require the maintenance of any letter, memorandum, or document relating to misconduct by the license holder that is from the employing agency and the misconduct resulted in disciplinary action by the employing agency.

### **Disciplinary Action Against Law Enforcement Agency**

The substitute includes a provision not in the engrossed requiring TCOLE, except with respect to an officer elected under the Texas Constitution, 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 has been suspended, or reprimand a law enforcement agency for a violation of specified state law or TCOLE rule.

### **Adoption of Policies**

Whereas the engrossed required each law enforcement agency in Texas to adopt the policies required under the bill not later than May 1, 2024, the substitute requires instead that TCOLE, not later than March 1, 2024, establish a date by which those policies must be adopted.