

BILL ANALYSIS

Senate Research Center
88R9077 SCP-D

S.B. 1445
By: Paxton et al.
Criminal Justice
3/31/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Summary

The Sunset Advisory Commission reviewed the Texas Commission on Law Enforcement (TCOLE) during the 2020-2021 biennium, but its Sunset bill, H.B. 1550, did not pass during the 87th legislative session. Instead, the legislature continued TCOLE for an additional two years in S.B. 713 and directed the Sunset Commission to conduct a limited scope review of TCOLE in the 2022-23 biennium.

The Sunset Commission once again found that Texas' approach to law enforcement continues to lag behind the needs of the state. The 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. The commission recommends requiring TCOLE to set and enforce standards for law enforcement agencies. In addition, to improve law enforcement hiring and separation practices, the commission recommends requiring law enforcement agencies to check a national decertification database before hiring, as well as eliminating discharge categories from the F-5 separation form.

TCOLE is subject to abolishment under the Sunset Act on September 1, 2023, unless continued by the legislature.

Major Provisions in Introduced Version of Sunset Legislation

- Continue the Texas Commission on Law Enforcement for 12 years instead of two years.
- Amend statute to require TCOLE, with input from an advisory committee, to set and enforce minimum standards for law enforcement agencies (LEAs) in rule.
- Remove the separation categories of honorable, general, and dishonorable from the F-5 form.
- Require law enforcement agencies to conduct a review of a national law enforcement database prior to hiring and before a license is granted. In addition, authorize TCOLE to designate one or more databases for use by law enforcement agencies when conducting pre-employment background checks.
- Require TCOLE to create a public-facing, searchable database that identifies information about a peace officer's license status.
- Require TCOLE to establish and maintain a system for LEAs to report failed fit-for-duty exams or refusals to be examined and authorize TCOLE to suspend licensees under limited circumstances.
- Clearly authorize TCOLE to maintain confidentiality of complainants when possible.
- Clearly define TCOLE's limited authority to issue administrative subpoenas.

- Explicitly authorize TCOLE to temporarily suspend a license in cases of imminent threat to public health, safety, or welfare, and require a timeline for due process hearings.
- Authorize TCOLE to establish advisory committees to make recommendations on programs, rules, and policies administered by it.

As proposed, S.B. 1445 amends current law relating to the continuation and functions of the Texas Commission on Law Enforcement.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Law Enforcement in SECTIONS 4 (Section 1701.163, Occupations Code), 5 (Section 1701.165 and 170.167, Occupations Code), 8 (Section 1701.205, Occupations Code), 9 (Section 1701.253, Occupations Code), and 16 (Section 1701.5011, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Law Enforcement is rescinded in SECTION 17 (Sections 1701.452 and 1701.4525, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1701.002, Occupations Code, as follows:

Sec. 1701.002. APPLICATION OF SUNSET ACT. Provides that the Texas Commission on Law Enforcement (TCOLE) is subject to Chapter 325 (Sunset Law), Government Code. Provides that TCOLE, unless continued in existence as provided by that chapter, is abolished and Chapter 1701 (Law Enforcement Officers) expires September 1, 2035, rather than September 1, 2023.

SECTION 2. Amends Section 1701.059, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires that the training program provide the person with information regarding:

- (1) the law governing TCOLE operations, rather than legislation that created TCOLE;
- (2) makes no changes to this subdivision;
- (3) the scope of and limitations on the rulemaking authority of TCOLE;
- (4) makes a nonsubstantive change to this subdivision;
- (5) the requirements of:
 - (A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and
 - (B) other laws applicable to members of a state policy-making body in performing their duties; and
- (6) makes a nonsubstantive change to this subdivision.

(d) Requires the executive director of TCOLE (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of TCOLE. Requires each TCOLE member to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 3. Amends Section 1701.151, Occupations Code, as follows:

Sec. 1701.151. GENERAL POWERS OF COMMISSION; RULEMAKING AUTHORITY. Authorizes TCOLE to:

- (1) makes no changes to this subdivision;
- (2) establish minimum standards relating to competence and reliability, including education, training, physical, and mental, rather than mental and moral, standards, for licensing as an officer, county jailer, public security officer, or telecommunicator;
- (3)-(6) makes no changes to these subdivisions.

SECTION 4. Amends Section 1701.163, Occupations Code, as follows:

Sec. 1701.163. New heading: MINIMUM STANDARDS FOR LAW ENFORCEMENT AGENCIES. Requires TCOLE, with input from an advisory committee, to by rule establish minimum standards with respect to the creation or operation of a law enforcement agency, including:

- (1) a determination regarding the need for creating the agency in the community;
- (2) the sustainable funding sources for the agency;
- (3) the physical resources available to officers, which may differ based on the size of the law enforcement agency, including:
 - (A) duty firearms, including patrol rifles and shotguns;
 - (B) less lethal force weapons, including a requirement of at least one per officer on duty;
 - (C) effective communications equipment;
 - (D) protective equipment, including a requirement of at least one protective vest per officer on duty;
 - (E) officer uniforms; and
 - (F) patrol vehicles and associated equipment;
- (4) the physical facilities of the agency, including any evidence room, dispatch area, or public area;
- (5) the policies of the agency, including policies on:
 - (A)-(E) makes no changes to these paragraphs;
 - (F)-(G) makes nonsubstantive changes to these paragraphs;
 - (H) active shooters; and
 - (I) barricaded subjects;
- (6) the administrative structure of the agency;
- (7) liability insurance; and
- (8) any other standard TCOLE considers necessary.

Deletes existing text providing that this section applies only to an entity authorized by statute or by the constitution to create a law enforcement agency or police department and commission, appoint, or employ officers that first creates a law enforcement agency or police department and first begins to commission, appoint, or employ officers on or after September 1, 2009. Deletes existing text requiring the entity to submit to TCOLE on creation of the law enforcement agency or police department information regarding the need for the law enforcement agency or police department in the community; the funding sources for the law enforcement agency or police department; the physical facilities that the law enforcement agency or police department will operate, including any descriptions of the evidence room, dispatch area, and public area; certain law enforcement policies of the law enforcement agency or police department; the administrative structure of the law enforcement agency or police department; and any other information TCOLE requires by rule.

SECTION 5. Amends Subchapter D, Chapter 1701, Occupations Code, by adding Sections 1701.165, 1701.166, 1701.167, 1701.168, and 1701.169, as follows:

Sec. 1701.165. ADVISORY COMMITTEES. (a) Authorizes TCOLE by rule to establish advisory committees to make recommendations to TCOLE on programs, rules, and policies administered by TCOLE.

(b) Requires TCOLE, in establishing an advisory committee under this section, to adopt rules, including rules regarding:

- (1) the purpose, role, responsibility, goals, and duration of the committee;
- (2) the size of and quorum requirement for the committee;
- (3) qualifications for committee membership;
- (4) appointment procedures for members;
- (5) terms of service for members;
- (6) training requirements for members;
- (7) policies to avoid conflicts of interest by committee members;
- (8) a periodic review process to evaluate the continuing need for the committee; and
- (9) policies to ensure the committee does not violate any provision of Chapter 551 (Open Meetings), Government Code, applicable to TCOLE or the committee.

Sec. 1701.166. SUBPOENA. (a) Authorizes TCOLE to compel by subpoena the production for inspection or copying of a record described by Section 1701.162(a) (relating to entitling TCOLE to access records under certain sections) that is relevant to the investigation of an alleged violation of this chapter or a commission rule.

(b) Authorizes TCOLE, acting through the attorney general, to bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Provides that venue for an action brought under Subsection (b) is in a district court in Travis County or any county in which TCOLE is authorized to conduct a hearing.

(d) Requires the court to order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Sec. 1701.167. EXAMINATION OF LICENSE HOLDER. (a) Requires TCOLE to adopt rules specifying the circumstances under which TCOLE is authorized to request that a license holder submit to an examination described by Section 1701.306(a) (relating to prohibiting TCOLE from issuing a license to a person unless the person is examined by certain people) by a psychologist, psychiatrist, or physician selected by TCOLE to determine whether the license holder continues to meet the standards required by that section.

(b) Requires TCOLE, if the license holder refuses to submit to the examination, to issue an order requiring the person to show cause for the person's refusal at a hearing on the order scheduled for not later than the 30th day after the date notice is served on the person. Requires TCOLE to provide notice under this section by personal service or by registered mail, return receipt requested.

(c) Authorizes the person, at the hearing, to appear in person and by counsel and present evidence to justify the person's refusal to submit to examination. Requires TCOLE, after the hearing, to issue an order requiring the person to submit to an examination under this section or withdrawing the request for the examination.

(d) Authorizes TCOLE, unless the request is withdrawn, to suspend the license of a person who refuses to submit to the examination.

(e) Provides that an appeal from TCOLE's order under this section is governed by Chapter 2001 (Administrative Procedure), Government Code.

(f) Requires TCOLE, if the results of an examination under this section show that the person does not meet the standards of Section 1701.306(a), to suspend the person's license.

(g) Provides that records relating to a request or order of TCOLE or a hearing or examination conducted under this section, including, if applicable, the identity of the person notifying TCOLE that a license holder may not meet the standards required by Section 1701.306(a), are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(h) Authorizes an order issued by TCOLE regarding a license holder that is based on information obtained during an examination under this section to only reference the statutory basis for the order and prohibits it from disclosing the reason for the examination.

Sec. 1701.168. REFUSAL OR FAILURE OF EXAMINATION. (a) Requires a law enforcement agency, except as provided by Subsection (b), to report to TCOLE a license holder who refuses to submit to or fails an examination ordered under Section 1701.167.

(b) Provides that a law enforcement agency is not required to report a failed examination under Subsection (a) if the license holder submits to and successfully completes a treatment program within a reasonable time, as prescribed by commission rule. Authorizes a law enforcement agency to assign a license holder who submits to a treatment program under this subsection to a non-law enforcement role for the duration of the treatment program and until the license holder passes the examination.

Sec. 1701.169. PREEMPLOYMENT DATABASE. Requires TCOLE to designate one or more national law enforcement databases that a law enforcement agency is required to access to complete the preemployment background check required under Sections 1701.303(a) (relating to requiring a law enforcement agency or governmental entity that hires a person for whom a license is sought to file an application with TCOLE) and

1701.451(a) (relating to the requirement of a law enforcement agency to fulfil certain requirements before the agency is authorized to hire a person). Requires that a database designated under this section:

(1) contain records related to a person's previous law enforcement employment or experience, including any:

(A) commendations or awards;

(B) misconduct or disciplinary records; and

(C) certifications or licenses held;

(2) be maintained by the federal government or a nationally recognized law enforcement accreditation association; and

(3) provide a process for a person to contest or amend any information maintained in the database relating to the person.

SECTION 6. Amends Section 1701.202, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Entitles, rather than authorizes, a license holder, on request, except as provided by Subsection (d), to obtain information regarding a complaint made against the license holder under this chapter, including a complete copy of the complaint file. Makes a nonsubstantive change.

(d) Provides that TCOLE is not required to provide the identity of any nontestifying complainant in response to a request under Subsection (b).

SECTION 7. Amends Section 1701.203(c), Occupations Code, as follows:

(c) Requires TCOLE to periodically notify the complaint parties, rather than parties to the complaint, of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

SECTION 8. Amends Subchapter E, Chapter 1701, Occupations Code, by adding Section 1701.205, as follows:

Sec. 1701.205. OFFICER PROFILES. (a) Requires TCOLE to create a public database containing profiles of each officer licensed under this chapter. Requires that a profile:

(1) include the information required by Subsection (b); and

(2) be compiled in a format that makes the information contained in the profile readily available to the public.

(b) Requires that a profile, except as otherwise provided by this section, contain the following information with respect to each officer:

(1) the date the officer completed the basic training course;

(2) whether the officer is in compliance with continuing education requirements and the continuing education courses completed;

(3) the total hours of training the officer has completed; and

(4) the date the officer's license was issued.

(c) Requires TCOLE to adopt rules to exclude from the database profiles for certain officers if including the profile would create a safety risk for the officer

based on the officer's position or duties, including the profiles of undercover officers and officers involved in active narcotics operations.

SECTION 9. Amends Section 1701.253, Occupations Code, by adding Subsection (a-1) and amending Subsections (g), (h), (i), (j), (l), (m), (o), and (p), as follows:

(a-1) Requires TCOLE by rule to establish deadlines for an officer to complete any minimum curriculum requirements that are not completed as part of the officer's basic training course.

(g) Deletes existing text requiring an officer to complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(h) Deletes existing text requiring an officer to complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(i) Deletes existing text requiring an officer to complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(j) Deletes existing text requiring an officer to complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(l) Deletes existing text requiring an officer to complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

(m) Deletes existing text requiring an officer to complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(o) Deletes existing text requiring an officer to complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

(p) Deletes existing text requiring an officer to complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

SECTION 10. Amends Section 1701.303(a), Occupations Code, as follows:

(a) Requires a law enforcement agency, before the law enforcement agency or governmental entity hires a person for whom a license is sought, to:

(1) review any information relating to the person available in a database designated by TCOLE under Section 1701.169; and

(2) creates this subdivision from existing text.

SECTION 11. Amends Section 1701.404(b), Occupations Code, as follows:

(b) Authorizes TCOLE to certify a sheriff, sheriff's deputy, constable, other peace officer, county jailer, or justice of the peace as a special officer for offenders with mental impairments if the person:

(1)-(2) makes no changes to these subdivisions; and

(3) passes an examination administered by TCOLE that is designed to test the person's:

(A) knowledge and recognition of the characteristics and symptoms of mental illness, intellectual disabilities, rather than mental retardation, and developmental disabilities, rather than mental disabilities; and

(B) makes no changes to this paragraph.

SECTION 12. Amends Section 1701.451(a), Occupations Code, as follows:

(a) Requires a law enforcement agency, before a law enforcement agency is authorized to hire a person licensed under this chapter, on a form and in the manner prescribed by TCOLE. to:

(1)-(2) makes no changes to these subdivision; and

(3) submit to TCOLE confirmation that the agency, to the best of the agency's ability before hiring the person:

(A) makes no changes to this paragraph; and

(B) except as provided by Subsection (b), obtained and reviewed as related to the person, as applicable:

(i)-(ix) makes no changes to these subparagraphs;

(x)-(xi) makes nonsubstantive changes to these subparagraphs; and

(xii) information on the person's law enforcement background as available through a database designated by TCOLE under Section 1701.169.

SECTION 13. Amends Section 1701.453, Occupations Code, as follows:

Sec. 1701.453. New heading: MAINTENANCE OF REPORTS. Requires TCOLE to maintain a copy of each report, rather than report and statement, submitted to TCOLE under Subchapter J (Employment Records and Preemployment Procedure) until at least the 10th anniversary of the date on which the report, rather than report or statement, is submitted.

SECTION 14. Amends Section 1701.456(a), Occupations Code to provide that TCOLE is not liable for civil damages for providing information contained in a report, rather than report or statement, maintained by TCOLE under this subchapter if TCOLE released the information as provided by this subchapter.

SECTION 15. Amends the heading to Subchapter K, Chapter 1701, Occupations Code, to read as follows:

SUBCHAPTER K. DISCIPLINARY GROUNDS AND PROCEDURES

SECTION 16. Amends Subchapter K, Chapter 1701, Occupations Code, by adding Section 1701.5011, as follows:

Sec. 1701.5011. EMERGENCY SUSPENSION. (a) Requires TCOLE to adopt rules specifying the circumstances under which TCOLE is authorized to issue an emergency order, without a hearing, suspending a person's license for a period not to exceed 90 days after determining that the person constitutes an imminent threat to the public health, safety, or welfare.

(b) Requires that an order suspending a license under this section state the length of the suspension in the order.

(c) Requires TCOLE, if an emergency order is issued without a hearing under this section to, not later than the 10th day after the date the order was issued, set the time and place for a hearing on the order. Requires that the hearing be conducted as soon as practicable. Requires that a hearing under this section to affirm, modify, or set aside the emergency order be conducted by the State Office of Administrative Hearings. Requires that the order be affirmed to the extent that good cause existed to issue the order.

(d) Authorizes TCOLE by rule to prescribe procedures for the determination and appeal of an emergency order issued under this section, including a rule allowing TCOLE to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).

(e) Provides that a proceeding under this section is a contested case under Chapter 2001, Government Code.

SECTION 17. Repealers: Sections 1701.452(b) (relating to requiring the head of a law enforcement agency or the head's designee to include in the report a statement on the discharge status of the license holder) and (c) (relating to authorizing TCOLE by rule to further specify the circumstances that constitute honorably discharged, dishonorably discharged, and generally discharged), Occupations Code.

Repealer: Section 1701.4521 (License Suspension for Officer Dishonorably Discharged), Occupations Code.

Repealer: Section 1701.4525 (Petition for Correction of Report; Hearing), Occupations Code.

SECTION 18. (a) Provides that except as provided by Subsection (b) of this section, Section 1701.059, Occupations Code, as amended by this Act, applies to a member of TCOLE appointed before, on, or after the effective date of this Act.

(b) Provides that a member of TCOLE who, before the effective date of this Act, completed the training program required by Section 1701.059, Occupations Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 1701.059, Occupations Code. Prohibits a TCOLE member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TCOLE held on or after December 1, 2023, until the member completes the additional training.

SECTION 19. (a) Requires TCOLE, not later than March 1, 2024, to:

(1) adopt rules and update forms as necessary to implement the changes in law made by this Act to Chapter 1701, Occupations Code; and

(2) designate the database as required by Section 1701.169, Occupations Code, as added by this Act.

(b) Requires TCOLE, not later than September 1, 2024, to establish the database containing officer profiles as required by Section 1701.205, Occupations Code, as added by this Act.

SECTION 20. Makes application of Sections 1701.303(a) and 1701.451(a), Occupations Code, as amended by this Act, prospective to March 1, 2024.

SECTION 21. Provides that the changes in law made by this Act to Subchapter J, Chapter 1701, Occupations Code, apply only to a report required to be submitted under Section 1701.452, Occupations Code, as amended by this Act, regarding a separation of a license holder that occurs on or after March 1, 2024. Provides that a separation that occurs before March 1, 2024, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 22. Effective date: September 1, 2023.