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**Texas Commission on Law Enforcement: A
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Texas Commission on Law Enforcement: A Municipal-Administrative Law Perspective

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I. INTRODUCTION

The regulation of local policing in Texas is largely left in the hands of employing law enforcement agencies, with little involvement by the Texas agency charged with licensing peace officers. Although the Texas Commission on Law Enforcement (TCOLE) is responsible for establishing the “minimum standards relating to competence and reliability” of Texas peace officers, TCOLE lacks substantive power to enforce any standards of police conduct.² For example, TCOLE has no ability to set standards for the use of force throughout the State. Nor can it discipline officers for engaging in racial profiling. TCOLE’s regulatory force over individual officers is minimal and addresses only initial licensing qualifications, criminal convictions, and dishonorable discharges. Unlike for physicians, engineers, or fire sprinkler installers, Texas police officers have no statewide professional standards of care which could be enforced by a state agency.

In preparation for the 2021 Texas Legislative Session, the Texas Sunset Advisory Commission examined TCOLE’s operations and compared it to other similar licensing boards for other professions. The resulting Texas Commission on Law Enforcement Staff Report of the 87th Texas Legislative Session found TCOLE’s to be a “toothless” agency unable to enforce standards of professional conduct and without authority over law enforcement agencies. The report also found that Texas has a “bifurcated approach” to policing regulations. The bifurcated approach refers to the large role employers play in regulating policing in combination with TCOLE’s minimal authority over policing. The result is a “fragmented, outdated system with poor accountability, lack of statewide standards, and inadequate training.”³

Without a unifying state agency to enforce the minimum standards of conduct for Texas officers, the officers’ employers—cities, counties, and even the State in its capacity as an employer—are left with the responsibility to create the standards in a regulatory vacuum. In addition, Texas has 2,700 law enforcement agencies and 78,632 licensed police officers registered with TCOLE, which means that there are thousands of interpretations of the minimally acceptable conduct for police officers.⁴ While there is no doubt a level of commonality found in municipal police department policies, even a limited review of publicly available policies shows a wide variation in the type of conduct that will lead to disciplinary action.⁵ These variations sow

¹ The materials contained herein represent the opinions of the author and should not be construed to be the action or opinion of the City of Austin.

² Sunset Advisory Commission Report, Texas Commission on Law Enforcement Staff Report (Austin: Texas Sunset Advisory Commission, 87th Legislature 2021). In response to this ongoing problem, District 17 Texas State Representative John Cryier (R) filed HB 1550 in response to the. While the bill passed out of the Homeland Security & Public Safety Committee and was placed on the Major State Calendar, the clock ran out before a vote on the House Floor.

³ <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB1550> Since die for the 87th Texas Legislative Session occurred on May 31, 2021.

⁴ *Id.* at 10. See also, <http://www.tcole.texas.gov/content/current-statistics>

⁵ Disciplinary policies for the following Texas municipal police departments were reviewed: Alpine, Austin, Dallas, Denton, Fort Worth, Houston, and Tyler.

confusion for officers, especially when geographically adjacent departments respond to the same emergency.⁶

Texas is not alone in facing the problem of too many jurisdictions and no set of unifying professional standards. In 2016, the U.S. Department of Justice issued a bulletin about the staffing of local police departments across the country.⁷ The bulletin concluded that of the 15,322 general purpose law enforcement agencies in the U.S., local police (municipal and county) made up 80% of the agencies and employed 67% of all full-time officers. About half of the local departments employed fewer than 10 officers. A total of 14% of local police officers in the United States work in department of under 25 full-time officers. In Texas, an even greater number of officers work in small departments—about 60% of the law enforcement agencies have fewer than 10 law enforcement personnel.⁸ Given the complexity of policing, it would be helpful to have a unifying state agency to provide the minimum standards for what is expected of a police department, regardless of its size.

Although every state, except for Hawaii, has a police officer standards and training commission like TCOLE, these commissions have not proved effective in establishing training material standards, ensuring that police receive adequate training on an ongoing basis, establishing minimum professional conduct standards, and disciplining the licenses of police officers who fail to meet those standards.⁹ Even when officers are disciplined at the local level and reported to a state agency, there is no guarantee that the report will be upheld. And there is no national database which law enforcement agencies are required to make a report of misconduct to or check before hiring a new officer.¹⁰

In Texas, law enforcement agencies are required to make a report of officer misconduct only upon the termination of the officer's employment.¹¹ The agencies report whether the officer was honorably, generally, or dishonorably discharge, but no supporting information is provided to TCOLE.¹² Should an officer appeal a general or dishonorable discharge, TCOLE plays no role in the administrative hearing on the appeal.¹³ Instead, the former employer is expected to defend the report at the hearing. This is yet another example of Texas's bifurcated approach to the regulation of policing and the overreliance on employers to regulate the police profession. The

⁶ *Id.* at 10-11. The report points out that even adjacent municipal police departments have significant differences in police conduct by using the example of the use of chokeholds in the Dallas-Fort Worth metroplex. Chokeholds are permitted on west side of the 3200 block of Sandy Lane but not on the east side because each side of the street is covered by a different police department.

⁷ Shelley S. Hyland, et.al., U.S. Department of Justice, Local Police Departments 2016: Personnel, NCJ 252835 (Oct. 2019).

⁸ Sunset Report at 15.

⁹ Roger Goldman, *A Model Decertification Law*, 32 St. Louis U. Pub. L. Rev. 147 (2013). *See also* Roger Goldman, *Importance of State Law in Police Reform*, 60 St. Louis U. Pub. L. Rev. 363 (2016).

¹⁰ The International Association of Directors operates a National Decertification Index which holds a national registry of certificate or license revocation actions relating to officer misconduct. Participation in the index is completely voluntary. <https://www.iadlest.org/our-services/ndi/about-ndi>

¹¹ Tex. Occ. Code Ch. 1701.

¹² Tex. Occ. Code § 1701.452, Employment Termination Report.

¹³ Tex. Occ. Code § 1701.4525, Petition for Correction of Report; Hearing.

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