

Senate Bill 1445

and its Impact on TCOLE and Law Enforcement

TPCA Conference 2024 – March 27, 2024

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SB 1445 Analysis

- Overhauls TCOLE
- Remove separation categories from F-5 form
- Many requirements placed on TCOLE
- TCOLE, with input from advisory committees, is required to set up and enforce minimum standards for Law Enforcement Agencies
- Model Policies: Hiring Procedures, Misconduct, Personnel Files, Fit-For-Duty, Minimum Standards
- Sunset date: 9/1/2031

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SB 1445

- Establish minimum standards relating to competence and reliability, including education, training, physical and mental standards for licensing as an officer, county jailer, public security officer, or telecommunicator [§1701.151]
- Minimum standards for LEAs (Law Enforcement Agencies) [§1701.163]
- Establishing advisory committees [§1701.165]

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Licensing Status Database(s)


Tex. Occ. Code §1701.168-.170

National database → Submit revoked licenses to national database

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Misconduct

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Misconduct Allegations

Tex. Occ. Code §1701.001 Definitions

(2-a) "Misconduct" means:

- (A) a violation of law; or
- (B) any of the following that have been sustained by a law enforcement agency employing a license holder:
 - (i) a violation of a law enforcement agency policy for which the agency may suspend, demote, or terminate a license holder's employment; or
 - (ii) an allegation of untruthfulness against a license holder.

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Misconduct & Hiring Model Policies
Tex. Occ. Code §1701.4522 – LEA requirements

- Shall adopt the model policy or a substantively similar policy. A policy adopted by a LEA under this section must be submitted to TCOLE and TCOLE shall maintain a copy of the policy.
- TCOLE shall maintain each report received under a policy adopted under this section as part of the license holder's record in the licensing status database established under § 1701.168.
- TCOLE shall notify a LEA seeking to appoint a license holder of a completed investigation report submitted to the commission with respect to the license holder not later than the fifth business day after the date TCOLE receives the report.

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Misconduct Model Policies for LEAs
Tex. Occ. Code §1701.4522

Submit to TCOLE each report of a completed investigation;

An investigation into the alleged misconduct of a license holder may not be terminated by the resignation, retirement, termination, death, or separation from employment;

License holder under investigation for misconduct is entitled to any internal due process procedures by employer to contest the investigation or completed report;

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Misconduct Model Policies for LEAs
Tex. Occ. Code §1701.4522

Require LEAs to

- Initiate an administrative or criminal investigation into alleged misconduct of employee when the agency becomes aware of it;
- Complete the investigation in a "timely" manner
- Report to TCOLE when criminal charges are filed after the investigation is completed (in a "timely" manner);
- Complete an administrative investigation and prepare/submit to TCOLE a **summary report**, including the disposition of the investigation and any informational findings, in a format prescribed by TCOLE not later than the 30th day after the date of separation from the agency, if applicable;
- Include documentation of the completed investigation in the personnel file, as described by § 1701.4535, of the license holder maintained by the agency; and
- Hiring agency must request the personnel file for preemployment

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Summary Report

This is new and needs to be developed

- Description of each allegation
- Investigative findings – sustained or not sustained
- Final disposition

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Misconduct Model Policies for LEAs
Tex. Occ. Code §1701.4522 – "Musts"

Submit to TCOLE each report of a completed investigation;

An investigation into the alleged misconduct of a license holder may not be terminated by the resignation, retirement, termination, death, or separation from employment

License holder under investigation for misconduct is entitled to any internal due process procedures by employer to contest the investigation or completed report

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Hiring, Personnel Files and Misconduct Committee

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	<p>Hiring, Personnel Files, Misconduct</p> <p>Presiding Officer: Chief Stan Standridge, San Marcos Police Department</p> <p>Assistant Presiding Officer: Assistant Chief Jessica Anderson, Houston Police Department</p> <p>City Manager James Devlin, City of Hewitt</p> <p>Lieutenant Clifford Drake, Texas Department of Public Safety</p> <p>District Attorney Carlos Garcia, 79th Judicial District Attorney's Office</p> <p>Human Resources Director Kristie Lewis, Public Member, City of Tomball</p> <p>Robert McCabe, Public Member</p> <p>James Parnell, Dallas Police Association</p> <p>Captain Derrus Rice, Randall County Sheriff's Office</p> <p>Chief Victor Rodriguez, McAllen Police Department</p> <p>TJ Smetzer, Texas Municipal Police Association</p> <p>Jennifer Szymanski, Combined Law Enforcement Associations of Texas</p> <p>Chief Deputy Jason Warren, Walker County Constable's Office, Pct 3</p>
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	<p style="text-align: center;">State of Texas Model Policy: <u>Misconduct Allegations</u></p> <p>PURPOSE: To establish guidelines for investigating allegations of misconduct.</p> <p>1. DEFINITIONS AND REFERENCES</p> <ul style="list-style-type: none"> • 1.1 License Holder: A Texas County Jailer, Peace Officer, or Telecommunicator. • 1.2 Allegation of Misconduct: A written complaint of misconduct, as defined in paragraph 1.3, and signed by the complainant. • 1.3 Misconduct: Violations of federal or state laws or local ordinances and alleged conduct including: use of excessive force, untruthfulness, unlawful search, unlawful arrest, civil rights violations, racially motivated police actions, discrimination, sexual harassment, or any conduct that seriously degrades the integrity or good order of the organization. • For purposes of this policy, allegations of untruthfulness shall include false, untrue, or misleading statements, either by overt means or by omission. Misconduct does not include minor rule violations of a less serious nature.
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	<p style="text-align: center;">CONTD:</p> <p style="text-align: center;">State of Texas Model Policy: <u>Misconduct Allegations</u></p> <ul style="list-style-type: none"> • 1.4 Summary Report: A report providing a description of each allegation of misconduct, the investigative findings of each allegation, including whether sustained or not sustained, and the final disposition of each allegation. • 1.5 TCOLE: Texas Commission on Law Enforcement.
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	<p style="text-align: center;">CONTD:</p> <p style="text-align: center;">State of Texas Model Policy: <u>Misconduct Allegations</u></p> <p>2. INVESTIGATION PROCEDURES</p> <ul style="list-style-type: none"> • 2.1 This agency shall investigate allegations of misconduct that may result in suspension, demotion, or termination at the time the agency becomes aware of the alleged misconduct. • 2.2 Initiate an appropriate administrative or criminal investigation into alleged misconduct of a license holder employed by this agency at the time the agency becomes aware of the alleged misconduct. • 2.3 Complete the investigation within 180 days, absent other applicable laws, provisions of collective bargaining, meet and confer, other agreements, or policies. • 2.4 Report to TCOLE an investigation into alleged criminal misconduct for which criminal charges are filed against the license holder within 30 days after the investigation is completed.
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	<p style="text-align: center;">INVESTIGATION PROCEDURES CONTD:</p> <p style="text-align: center;">State of Texas Model Policy: <u>Misconduct Allegations</u></p> <ul style="list-style-type: none"> • 2.5 Complete an administrative investigation of alleged misconduct. On a template provided by TCOLE, prepare and submit to TCOLE a summary report of the investigation 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. • 2.6 Include documentation of the completed investigation in the license holder's personnel file maintained by the agency as described by Texas Occupations Code § 1701.4535, or § 1701.4522, as applicable. • 2.7 Notify TCOLE if the matter is under appeal. The agency shall notify TCOLE of the disposition of an appeal within 30 days of receipt of the decision. • 2.8 If a license holder separates from this agency during the pendency of an investigation of misconduct, the agency shall complete the investigation, and submit a summary report to TCOLE regardless of the findings.
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	<p style="text-align: center;">Shall Investigate...</p> <ul style="list-style-type: none"> • At the time the agency becomes aware... • Complete within 180 days, absent other law or provision of collective bargaining / meet and confer agreements • Report to TCOLE within 30 days of completion if criminal charges are filed • Provide TCOLE summary report within 30 days after the date of the license holder's separation from the agency, or... • If they separate during pendency of investigation, LEA shall complete the investigation and submit summary report • Notify TCOLE of appeals and dispositions of appeals <div style="text-align: right;">  </div>
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<h1>Hiring</h1>	19
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<p>Hiring Procedures Tex. Occ. Code §1701.4522</p> <ul style="list-style-type: none"> • Before hiring, agency must confirm to TCOLE that it has reviewed termination reports and <i>misconduct investigation reports</i> • Provisional hiring period of at least 45 days and allow new employer to terminate the newly hired license holder; • Before hiring, LEA must review licensing status database established under Section 1701.168 as part of preemployment procedures 	20
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<h1>Hiring Model Policy</h1>	21
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<p>State of Texas Model Policy: <u>Hiring Procedures</u></p>	<p>PURPOSE: To establish guidelines for hiring and background investigations for applicants for peace officer, telecommunicator, and county jailer appointments.</p> <p>1. PERSONAL HISTORY STATEMENT AND WRITTEN CONSENT</p> <ul style="list-style-type: none"> • 1.1 Applicants for employment must submit a completed Personal History Statement (PHS). This agency shall obtain written consent from each applicant before reviewing information required in the background investigation. 	22
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<p>State of Texas Model Policy: <u>Hiring Procedures</u></p>	<p>CONT'D</p> <p>2. BACKGROUND INVESTIGATION RECORDS</p> <ul style="list-style-type: none"> • 2.1 Before being hired, this agency shall conduct a thorough background investigation on each applicant which includes, at a minimum, the information referenced in this policy. • 2.2 Personnel files, as described by Texas Occupations Code §1701.4535, and other employee records from each previous law enforcement agency employer, including the employment application submitted to the previous employer. • 2.3 Employment termination reports and misconduct investigation reports maintained by TCOLE. • 2.4 Service records maintained by TCOLE. • 2.5 Proof that the person meets the minimum qualifications for enrollment in a training program under Texas Occupations Code § 1701.251(a). • 2.6 A military veteran's United States Department of Defense Form DD-214 or other military discharge record. • 2.7 Criminal history record information. • 2.8 Information on pending warrants as available through the Texas Crime Information Center and National Crime Information Center. • 2.9 Evidence of financial responsibility as required by Texas Transportation Code § 601.051. • 2.10 A driving record from the Department of Public Safety. 	23
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<p>State of Texas Model Policy: <u>Hiring Procedures</u></p>	<p>CONT'D</p> <p>2. BACKGROUND INVESTIGATION RECORDS</p> <ul style="list-style-type: none"> • 2.11 Proof of United States citizenship or, if the person is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge, proof of legal permanent residence and proof that the person has applied for United States citizenship. • 2.12 Information on the person's background from at least three personal references and at least two professional references. • 2.13 Information on the person's law enforcement background as available through the National Decertification Index (NDI) maintained by the International Association of Directors of Law Enforcement Standards and Training (IADLEST); and obtaining and reviewing records with entry agencies if a matching record exists. • 2.14 If applicable, a file or record obtained by the commission under Texas Occupations Code §1701.3035. 	24
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State of Texas Model Policy: <u>Hiring</u> <u>Procedures</u>	CONT'D 3. BACKGROUND INVESTIGATION	25
	<ul style="list-style-type: none"> • 3.1 Files and records must be reviewed electronically (such as through the secure electronic file sharing system provided by TCOLE, which is strongly encouraged due to confidentiality purposes) or in person (if the previous law enforcement agency agrees). File review may not be done by phone. • 3.2 The investigator will provide the other agency with a copy of the applicant's signed Release of Information before obtaining and reviewing all files and records. • 3.3 Agencies in other states and federal agencies do not normally have access to the TCOLE file sharing system. If files from those agencies cannot be reviewed in person, other reasonable efforts should be made to review the files electronically. If the files cannot be reviewed, the investigator should document the reason why and the efforts that were made in the background investigation report. • 3.4 If a Release of Information was provided and an agency does not respond to a file sharing request for records within ten business days and the investigator has made direct contact with the person from whom they are requesting files (such as phone or email), the investigator should contact their TCOLE Field Service Agent for assistance. 	

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State of Texas Model Policy: <u>Hiring</u> <u>Procedures</u>	CONT'D 3. BACKGROUND INVESTIGATION	26
	<ul style="list-style-type: none"> • 3.5 An investigator must contact each agency to determine if records still exist regardless of records retention schedules. Some agencies retain records long past those schedules, and all available records must be reviewed. • 3.6 If an agency no longer has records, most will upload a form letter to the file sharing system documenting the lack of records and the reason why. That letter should be added to the background investigation report. • 3.7 If a previous agency no longer exists or is currently unmanned, the investigator should confirm and document the same in the background investigation report. The investigator should contact the governing body over a former or unstaffed agency to determine what records remain and how they can be accessed. • 3.8 The background investigator shall document all findings pertinent to the background investigation in a background investigation report. A copy of the background investigation report shall be maintained in the employee's personnel file. 	

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State of Texas Model Policy: <u>Hiring</u> <u>Procedures</u>	CONT'D 4. TCOLE FORMS	27
	<ul style="list-style-type: none"> • 4.1 L-1: TCOLE Appointment Application form. • 4.2 L-2: TCOLE Licensee Medical Condition Declaration form. • 4.3 L-3: TCOLE Licensee Psychological and Emotional Health Declaration form. • 4.4 L1-T: TCOLE Telecommunicator Appointment form. • 4.5 During the appointment of any licensee, this agency will complete the appropriate background and appointment forms required by TCOLE. Such forms will document that all background investigation steps required by Texas Occupations Code §1701.451 were completed prior to appointment and how those steps were completed. The information certified on the forms shall be consistent with the process required in Section 3 of this policy. 	

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State of Texas Model Policy: <u>Hiring</u> <u>Procedures</u>	CONT'D 5. MEDICAL EXAMINATION AND DRUG SCREENING	28
	<ul style="list-style-type: none"> • 5.1 Before being hired, each applicant must undergo a drug screening by a physician licensed by the Texas Medical Board designated by this agency. • 5.2 Applicants for peace officer or county jailer must also undergo a medical examination by a physician licensed by the Texas Medical Board designated by this agency. The physician must be familiar with the duties appropriate to the type of appointment to be made. • 5.3 If the applicant successfully passes the medical examination and drug screening, the provider administering the exam shall sign the L-2. The L-2 shall be included in the employee's personnel file. • 5.4 If the applicant fails the medical examination or drug screening, this agency will report the failure to TCOLE on a form prescribed by TCOLE. 	

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State of Texas Model Policy: <u>Hiring</u> <u>Procedures</u>	CONT'D 6. PSYCHOLOGICAL EXAMINATION	29
	<ul style="list-style-type: none"> • 6.1 Before being hired, each applicant must undergo a psychological examination conducted by a psychologist licensed by the Texas Board of Examiners of Psychologists or a psychiatrist licensed by the Texas Medical Board and certified by the American Board of Psychiatry and Neurology, as designated by this agency. • 6.2 The psychologist or psychiatrist must be familiar with the job duties of the position the applicant applied for. • 6.3 The psychologist or psychiatrist must be given a copy of the applicant's PHS and background investigation report to review before the examination. • 6.4 The psychological examination must be conducted according to professional standards and include: use of at least two instruments, one measuring personality traits, and one measuring psychopathology; and conducting an interview after the two instruments above are scored and a review of the PHS and background investigation report. • 6.5 If the applicant successfully passes the psychological examination, the psychologist or psychiatrist shall sign the L-3. The L-3 shall be included in the employee's personnel file. • 6.6 If the applicant fails the psychological examination, this agency will report the failure to TCOLE on a form prescribed by TCOLE. 	

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State of Texas Model Policy: <u>Hiring</u> <u>Procedures</u>	CONT'D 7. FINGERPRINT CHECK RETURN	30
	<ul style="list-style-type: none"> • 7.1 Before being appointed, each applicant must successfully complete a fingerprint search of local, state, and United States records and fingerprint files to disclose any criminal record. A copy of the fingerprint check return shall be maintained in the personnel file. <p>8. FIREARMS QUALIFICATION</p> <ul style="list-style-type: none"> • 8.1 If the applicant is a current Texas Peace Officer, the applicant must submit an official record of annual firearms qualification within the past 12 months or complete a firearms qualification prior to employment. <p>9. APPOINTMENT OF LICENSEE</p> <ul style="list-style-type: none"> • 9.1 Upon hiring, a complete and accurate L-1 or L1-T will be submitted to TCOLE. • 9.2 A copy of the L-1 or L1-T will be notarized and maintained in the employee's personnel file. 	

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<p>State of Texas Model Policy: <u>Hiring Procedures</u></p>	<p>CONT'D</p> <p>10. PROVISIONAL HIRING PERIOD</p> <ul style="list-style-type: none"> • 10.1 Applicants hired while the subject of a misconduct investigation with a previous employing agency may initially be hired on a provisional basis of 90 days. • 10.2 During that provisional period, this agency will obtain and review the completed misconduct investigation report from the previous employing agency or TCOLE and may choose to terminate the provisional employment based on those findings. • 10.3 This provisional period is unrelated to any other probationary hiring periods used by this agency. 	31
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<h1>Personnel Files Policy</h1>		32
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<p>Personnel Files Tex. Occ. Code §1701.4535 – Model Policy “Musts”</p> <p>Require the head of a LEA or the designee to maintain a personnel file on each license holder employed by the agency that contains any letter, memorandum, or document relating to:</p> <ul style="list-style-type: none"> • (A) 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; • (B) 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 • (C) the periodic evaluation of the license holder by a supervisor; and 	33
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<p>Personnel Files – Cont'd. Tex. Occ. Code §1701.4535 – Model Policy “Musts”</p> <p>Provide that:</p> <p>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 there is insufficient evidence to sustain the charge of misconduct;</p> <p>If a negative letter, memorandum, document, or other notation of negative impact is included in a license holder's personnel file:</p> <ul style="list-style-type: none"> (i) the agency head or the designee shall, not later than the 30th day after the date of the inclusion, notify the affected license holder by certified mail; and (ii) 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; <p>Information contained in a license holder's personnel file may not be released without the license holder's written permission, <i>unless the release is required by law</i>;</p> <p>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 copies described by Paragraph (D).</p>	34
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<p>Personnel Files – Cont'd. Tex. Occ. Code §1701.4535 – Model Policy “Musts”</p> <p>(b) A LEA shall adopt the model policy described by Subsection (a) or a substantively similar policy. A policy adopted by LEA under this section must be submitted to TCOLE, and TCOLE shall maintain a copy of the policy.</p> <p>(c) Except as provided by Subsections (d) and (e), a LEA may 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 <i>unless required by law</i>. The agency shall refer the person or agency requesting the information to the agency head or the head's designee.</p> <p>(d) A LEA shall provide a license holder's personnel file to TCOLE:</p> <ul style="list-style-type: none"> (1) not later than the 30th day after the date the license holder separates from the agency; or (2) on request by TCOLE as part of an ongoing investigation relating to the license holder. <p>(e) As provided by § 1701.451, a law enforcement agency hiring a license holder is entitled to view the contents of the license holder's personnel file.</p> <p style="text-align: center;"><i>Adopting G file/§143.089(g)?</i></p>	35
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<p>State of Texas Model Policy: <u>Personnel Files</u></p>	<p>PURPOSE: To provide guidelines for the compilation and retention of “personnel files” as defined by this model policy.</p> <p>1. DEFINITIONS AND REFERENCES</p> <ul style="list-style-type: none"> • 1.1 Personnel File: (1) 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 this agency for an action, duty, or activity that relates to the license holder's official duties; (2) Any misconduct (as defined by section 1.3, Misconduct Allegations model policy) by the license holder if the letter, memorandum, or document is from the employing agency and resulted in disciplinary action; and (3) The periodic evaluation of the license holder by a supervisor. For reference, see Texas Local Government Code §143.089(a); Texas Occupations Code §1701.4535(a)(1). 	36
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<p>State of Texas Model Policy: <u>Personnel</u> <u>Files</u></p>	<p>CONT'D</p> <ul style="list-style-type: none"> 1.2 Department File: Any information not included in the definition of Personnel File, section 1.1, and referenced in sections 3.1-3.2. For reference, see Texas Local Government Code § 143.088(g); Texas Occupations Code §§ 1701.4522 and .4535(e). <p>2. PERSONNEL FILE CONTENTS</p> <ul style="list-style-type: none"> 2.1 This agency shall maintain a personnel file on each license holder employed by the agency. 2.2 If a negative letter, memorandum, document, or other notation of negative impact is included in a license holder's personnel file: <ul style="list-style-type: none"> a) The agency head or the head's designee shall, not later than the 30th day after the date of the inclusion, notify the affected license holder by certified mail, or by departmental or personal email, or in person; b) Notice is considered to be received electronically by the license holder, provided it is sent to the department or personal email address listed in the license holder's personnel file and the license holder confirms receipt; c) If confirmation of receipt is not provided by the license holder within seven calendar days of being sent electronically, the agency head or the head's designee must send the notification by certified mail; and d) 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. 	<p>37</p>
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<p>State of Texas Model Policy: <u>Personnel</u> <u>Files</u></p>	<p>CONT'D</p> <p>2. PERSONNEL FILE CONTENTS</p> <ul style="list-style-type: none"> 2.3 A license holder is entitled, on request, to a copy of any letter, memorandum, or document placed in the license holder's personnel file. This agency may charge the license holder a reasonable fee not to exceed the actual cost of any copies. 2.4 This agency may 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 without the license holder's written permission, unless the release is required by law. The agency shall refer the person or agency requesting the information to the agency head or the head's designee. 2.5 As provided by Texas Occupations Code § 1701.451, a law enforcement agency hiring a license holder is entitled to view the contents of the license holder's personnel file. 2.6 This agency shall 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. 	<p>38</p>
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<p>State of Texas Model Policy: <u>Personnel</u> <u>Files</u></p>	<p>CONT'D</p> <p>3. DEPARTMENT FILE CONTENTS</p> <ul style="list-style-type: none"> 3.1 Any 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 agency determines that there is insufficient evidence to sustain the charge of misconduct. 3.2 Law enforcement agencies shall also maintain a file on a license holder employed by the agency for the agency's use including all information not referenced in section 1.1, Definitions and References of this policy. This file should be marked "Designated as Confidential for Statewide Employment Database under Texas Occupations Code § 1701.168." 3.3 This agency may not release any information referenced in sections 3.1 and 3.2 to any other agency or person requesting information relating to the license holder without the license holder's written permission, unless the release is required by law. The agency shall refer the person or agency requesting the information to the agency head or the head's designee. 3.4 As provided by Texas Occupations Code § 1701.451, a law enforcement agency hiring a license holder is entitled to view the contents of the license holder's department file. 	<p>39</p>
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<p>Fitness For Duty</p>		<p>40</p>
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<p>Fit-For-Duty Tex. Occ. Code § 1701.167 – Model Policy "Musts"</p> <ul style="list-style-type: none"> Prescribe standards and procedures for the medical and psychological examination of a license holder or person for whom a license is sought by a LEA to ensure the license holder is able to perform the duties required LEA should have "just cause" to order the license holder Provide written notice of the examination that includes the reasons for the examination with at least 10 business days notice before the deadline to submit to the examination If the licensee refuses to submit to the examination – the LEA must report that to TCOLE Require agency to report failures to TCOLE "unless the license holder submits to and successfully completes an applicable treatment program within a reasonable time" as prescribed by TCOLE 		<p>41</p>
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<p>Medical and Psychological Examination of License/ FFD</p>		<p>42</p>
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Committee Members
Examination of Licensee (Fit for Duty)
Presiding Officer: Constable Shawn Kennington, Camp County Constable's Office
Assistant Presiding Officer: Chief Mike Harmon, Cedar Park Police Department
Judge Stephen Ables, Public Member
Chief Robert Crawford, Northlake Police Department
Curtis Howard, Public Member, Texas Police Chiefs' Association
Kevin Lawrence, Texas Municipal Police Association
Bob Leonard, Combined Law Enforcement Associations of Texas
Lisette Rivera, Dallas Police Department
Dr. Jonathan Sheinberg
Dr. Stephen Tate, Houston Police Department
Clay Taylor, Department of Public Safety Officers Association
Sheriff Johnwayne Valdez, Rusk County Sheriff's Office

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Applicability
<ul style="list-style-type: none"> • County Jailer • Peace Officer • Telecommunicator

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Supervisor Responsibility
<ul style="list-style-type: none"> • All supervisors should be alert to any indication that a member may be unable to safely perform their duties due to an underlying physical or psychological impairment or condition. • Such indicators may include, but not limited to the following: <ul style="list-style-type: none"> • An abrupt and negative behavior in the member's usual or normal behavior. • A pattern of irrational conduct, hostility, or oppositional behavior. • Personal expressions of instability. • Inappropriate use of alcohol or other substances, including prescribed drugs. • A pattern of questionable judgement, impulsive behavior, or the inability to manage emotions. • Any other factor or combination of factors causing a supervisor to believe the member may be suffering from an impairment or condition requiring intervention.

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Reporting...
<ul style="list-style-type: none"> • A supervisor observing a member, or receiving a report of a member, who has just cause to believe the member is unable to effectively perform their duties shall promptly <u>document</u> all objective information or observations. • The supervisor should attempt to meet with the member to inquire about the conduct or behavior giving rise to concerns. • If a meeting does not resolve the supervisor's concerns or does not take place, the supervisor shall promptly document observations and actions in writing and inform the appropriate chain of command.

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Definition of a FFDE...
<ul style="list-style-type: none"> • An FFDE is a formal, specialized examination of an incumbent member that results from: <ul style="list-style-type: none"> • Objective evidence that the member may be unable to effectively perform a defined job function; and • A reasonable basis for believing that the cause may be attributable to a medical or psychological condition or impairment. • As such, an FFDE is considered a "medical" examination under the terms of the Americans with Disabilities Act. The central purpose of an FFDE is to determine whether the member is able to effectively perform his or her essential job functions.

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Process...
<ul style="list-style-type: none"> • If a member is ordered to undergo a FFDE, the examination shall be conducted by the member's personal physician, psychiatrist, or psychologist, as required by the agency policy. • To facilitate the examination of any member, the agency will provide all appropriate documents and available information to the person or entity responsible for conducting the examination. • The examining practitioner will provide the agency with a report indicating whether the member is fit for duty. If the member is unfit for duty, the practitioner will include the existing restrictions or conditions in the report.

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Process...

- A second examination may be ordered by the appropriate authority if the member, the civil service commission, or the chief administrator questions the practitioner's report. The exam will be conducted by a physician, psychiatrist, or psychologist appointed in accordance with the procedure adopted by the governing body.
- If the report of the appointed practitioner disagrees with the report of the initial practitioner, the final determination as to the member's fitness shall be decided in accordance with applicable laws, provisions of collective bargaining, meet and confer, other agreements, or policies.

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Process...

- All reports and exams submitted by the examining practitioner shall be part of the member's confidential medical file.
- The chief administrator shall provide written notice of the examination to the license holder no later than the tenth business day before the deadline to submit to the exam.
- Any member ordered to undergo an FFDE and refuses an order may be deemed insubordinate and shall subject the member to discipline, up to and including termination.

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Agency's Responsibilities to Notify TCOLE

- The chief administrator shall notify TCOLE upon a final determination that a license holder is unable to effectively perform essential job functions. This notification shall be in writing and submitted to TCOLE within 30 days of the final determination that the license holder is unable to effectively perform essential job functions.
- The chief administrator shall notify TCOLE if the license holder fails to submit to an exam within the deadline set by the agency. This notification shall be in writing and submitted to TCOLE within 30 days after the deadline set by the agency has expired.
- The chief administrator shall notify TCOLE as soon as practicable if a license holder has completed the required exam or received notice that the license holder's circumstances have been successfully resolved.

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FFDE Minimum Standards

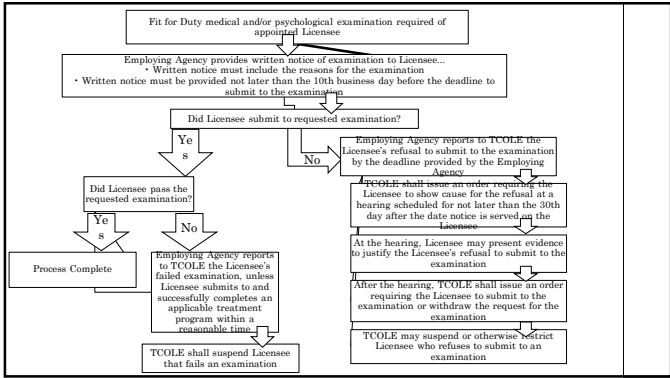
- The range of methods and data sources used by an FFDE examiner can vary, but such suggestions and further information about the process can be found in the IACP 2018 Psychological Fitness-For-Duty Examination.
- When conducting the FFDE, it may be necessary for the examiner to receive background and collateral information regarding the member's past and recent performance, conduct, and functioning. This may include but not limited to:
 - Job description
 - Performance evaluations
 - Previous remediation efforts
 - Commendations
 - IA investigations
 - Formal citizen or public complaints
 - Use of force incidents
 - Etc.

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Appeals

Members disputing the application or interpretation of this policy may submit a grievance as provided in the applicable grievance policy.

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Minimum Standards Committee

Presiding Officer: Sheriff Roy Boyd, Goliad County Sheriff's Office
 Asst. Presiding Officer: Chief Jaime Ayala, Edinburg Police Department

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Committee Members

- Chief Bill Avera, Jacksonville Independent School District PD
- Paul Christ, Texas Municipal League
- Chief Solomon Cook, Humble ISD PD
- Bob Lydia, Public Member
- Chief Ronald Phillips, Alvin Community College PD
- Constable Derreck Rose, Galveston County Constable's Office, Pct 3

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Committee members

- Marvin Ryals, Combined Law Enforcement Association of Texas
- Chief Derrick Watson, Plainview Police Department
- John Wilkerson, Texas Municipal Police Association

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Definitions

- 211.1
- (27) Firearms- Any handgun, shotgun, precision rifle, or fully automatic weapon that is carried by the individual officer in an official capacity. **For purposes of these rules, conducted energy devices (CEDs) are not firearms.**

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Definitions

- (39) Less lethal weapon- Definition was intended to not allow a firearm to be altered or utilized as the only less lethal option available for an officer.
- (47) Patrol vehicle- A vehicle equipped with emergency lights, siren, and the means to safely detain and transport a combative detainee.
- (63) Sustainable funding sources- Funding from an agency's governing body such as property tax, sales tax, use and franchise fees, and the issuance of traffic citations subject to Texas Transportation Code. Term limited sources, such as grants are not sustainable funding sources.

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Definitions

- (71) Uniform- Dress that makes an officer immediately identifiable as a peace officer, to include a visible badge. Acceptable uniform dress must be defined in agency policy and consistent in its application and use across the agency.

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211.16 Establishment or Continued Operation of an Appointing Entity

(a) To establish that an agency or a prospective agency meets the minimum standards for the creation or continued operation of a law enforcement agency, the agency must provide evidence that the agency:

- (1) provides public benefit to the community
- (2) has sustainable funding sources that meet or exceed the continued operating expenses outlined in a line-item budget for the LE agency

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211.16 Continued

(3) has physical resources available to officers

- (A) at least one firearm per officer on duty, provided by agency or the officer
- (B) at least one less lethal force weapon per officer on duty
- (C) effective communications equipment, specifically:
 - (i) at least one radio communication device per officer on duty performing patrol, courtroom security, traffic enforcement, responding to calls for service, assigned to a controlled access point, acting as a visual deterrent to crime, surveillance, warrant execution, and service of civil process; and
 - (ii) at least one cell phone device per officer on duty who may have contact with the general public and is not performing any of the duties described in (i);

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211.16 continued

(D) at least one bullet-resistant vest per officer on duty with vest panels that:

- (i) have been certified as compliant by the National Institute of Justice (NIJ)
- (ii) are within the ballistic performance warranty period listed by the manufacturer on the affixed tags; and
- (iii) have never been shot or otherwise compromised

(E) at least one uniform per officer whose duties include those mentioned in 211.16 (a) (3) (C) (i)

(F) at least one motor vehicle owned and insured by the agency; and

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211.16 continued

(G) patrol vehicles owned, insured, and equipped by the agency and provided to officers whose duties include any of the following:

- (i) performing patrol
- (ii) traffic enforcement; or
- (iii) responding to calls for service

(4) has physical facilities, including

- (A) an evidence room or other acceptable secure evidence storage for officers whose duties include any of the following; performing patrol, traffic enforcement, criminal investigations, responding to calls for service; or executing search or arrest warrants.

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211.16 Continued

• (B) a dispatch area for any agency appointing and employing telecommunicators, and

• (C) a public area including written notices posted and visible 24 hours a day explaining:

- (i) how to receive the most immediate assistance in an emergency;
- (ii) how to make a nonemergency report of a crime; and
- (iii) how to make a compliment or complaint on a member of the agency by mail, online, or by phone

(5) has policies including,

- (H) medical and psychological examination of licensees
- (I) active shooters

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211.16 Continued

(J) barricaded subjects

(K) evidence collection and handling

(L) eyewitness identification

(M) misconduct investigations

(N) hiring a license holder

(O) personnel files

(P) uniform and dress code

(Q) training required to maintain licensure; and

(R) outside or off-duty employment

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211.16 Continued

(6) has an established administrative structure, including,

- (A) an organizational chart for the agency that illustrates the division and assignment of licensed and unlicensed personnel
- (B) a projection for the number of full-time peace officers, part-time peace officers, and unpaid peace officers that the agency would employ during the year if at full staffing;
- (C) the number of School Resource Officer (SRO) positions employed by the agency and working in schools if the agency is not an independent school district (ISD) PD

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211.16 Continued

(7) has liability insurance for the agency and its vehicles

(8) has a defined process by which the agency will receive by mail, online, and by phone and document compliments and complaints on its employees

(9) any other information the commission requires

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211.16 Continued

(b) An entity authorized by law to establish a law enforcement agency and appoint licensees must first complete training offered and required by the commission on the establishment and continued operation of a new agency. The agency may then make application for an agency number by submitting the current agency number application form, any associated fee and evidence that they meet the requirements of this rule.

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211.16 Continued

(f) All law enforcement agencies must complete and submit an annual report documenting their continued compliance with the requirements of this rule. An agency that does not complete a report by March 1st of any year will be placed in an inactive status until the report is completed. An agency that is inactive for five continuous years may only resume operation after reapplying as a new agency.

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