

# Decertification

POLICY ASSESSMENT APRIL 2021

Most states have a process for revoking police officers' certification when they are convicted of felonies or certain misdemeanors, as well as for other forms of egregious or repeated misconduct. Decertification is intended to remove officers who are unfit to serve and also operate as a deterrent to misconduct. For a variety of reasons, however, police officers often remain on the job—either at their original agency or because they were rehired elsewhere—even after they have participated in misconduct that qualifies them for decertification. States and the federal government can address these gaps through a combination of reforms, including the improved gathering and sharing of data and the adoption of broader grounds for decertification.

## SUMMARY ASSESSMENT

- + Decertification standards and processes are intended to remove police officers whose misconduct is unlawful, harmful, or inappropriate from the law enforcement profession. But state variation in standards and practices dilutes the impact of such measures.
- + The continued employment of officers who are terminated in one agency only to find positions elsewhere undermines disciplinary regimes and puts communities, police officers, and policing agencies at both physical and legal risk, while eroding public trust in law enforcement.
- + National standards for decertification and a shared national database of decertified officers would help prevent officers who are unfit for duty from continuing to be employed as sworn law enforcement officers.
- + To bolster the validity and impact of decertification, decertification boards need adequate staff and resources to support review processes required for revocation decisions; states and localities need the resources and incentives to share data routinely and comprehensively; and police officers should be provided with assurance that their due process rights are honored.
- + Research should focus on the impact of specific decertification standards and processes on changes in officer behaviors and on more global measures of misconduct and community trust in the police.



## Current Practice and Research

The vast majority (46 of 50) of Peace Officer Standards and Trainings (POST) boards have the authority to decertify officers. But state decertification regimes vary dramatically in terms of the types of misconduct that qualify officers for decertification, the process by which decertification orders are made and appealed, and the prevalence of decertification. For example, while all but one of the 46 state POST agencies with authority to decertify officers can or must do so for felony convictions, fewer than half do not require officers to be convicted of a crime before they are eligible for decertification. Most POSTs with decertification power can decertify officers for misdemeanor convictions (78%) and failure to meet training requirements (69%), while a smaller proportion may decertify for prior termination of employment for cause (46%) or misconduct (52%) (Atherley and Hickman, 2013).

In addition to the grounds for decertification, the process of decertification review and determination varies significantly across states. Some states allow any member of the public to file a complaint triggering a decertification investigation, while others only begin the process when a law enforcement agency notifies the decertification entity that an officer is under review. States also differ in the amount of time after which a decertified officer may reapply to become a sworn officer, the composition of hearing panels, and the consequences of resigning during a pending investigation, among other crucial details. For example, hearing panels vary in size and composition. The New York State Police and Peace Officer Licensing Review Board is composed of seven members, with three appointed by the governor, two by the state attorney general, and one each appointed by the senate president pro tempore and the assembly speaker. By contrast, Illinois's newly created Illinois Law Enforcement Certification Review Panel has 11 members, 3 appointed by the governor and 8 appointed by the state attorney general, and prescribes that 2 members come from communities with high rates of gun violence, incarceration, and metrics of social disadvantage.<sup>1</sup>

Considerable variation is also evident in the rate of decertification among states. Some states decertify thousands of officers annually, while others decertify officers at a far lower rate (Wynn, 2019). One analysis found that Georgia (population 10.7 million) decertified 316 law enforcement officers in 2016, but similarly sized North Carolina (population 10.6 million) decertified just ten (Kelly and Nichols, 2019). However, even states with comparatively robust decertification rates often fail to decertify officers who have been dismissed from multiple police departments within that state (Patel, 2020).

While there is no federally operated national decertification database, the International Association of Directors of Law Enforcement Standards and Training (IADLEST) hosts and operates the National Decertification Index, which contains information on nearly 30,000 officers across 45 states who have been decertified since decertification began in the 1960s. Still, non-reporting by local agencies to the POSTs that contribute to the national index is widespread, and individually identifiable information is only available to state POSTs and the roughly 4,000 law enforcement background investigators who presently have access (Becar, 2021). As a result, agencies whose state POSTs do not have access to the database or fail to query it miss the opportunity to identify officers who would pose serious hiring risks (James and Finklea, 2021). Moreover, only 25 states require local police departments to report officer separations to state agencies, and those state agencies generally lack the resources necessary to investigate local departments for non-compliance (Goldman, 2012). However, policies may have changed since that 2012 study; no systematic review of state policies regarding the reporting of officer separations to state agencies currently exists.



## RESEARCH EVIDENCE

There is a small body of academic research, as well as court records and investigative journalism, demonstrating the potential value of a more robust and unified decertification regime. One area of research tracks officers over time, finding that those who are "separated" from one agency are often hired somewhere else, either in another state or even at another agency within the same state (Reicher, 2020; Lalwani and Johnston, 2020; Williams, 2016). These officers may move to less well-equipped departments with higher crime and violence rates and fewer police officer benefits, perhaps compounding cross-jurisdictional inequities in police service (Shockey-Eckles, 2011). One study of 30 years of Florida disciplinary data found that officers who were fired from one department were more likely to find their next jobs in smaller departments with fewer resources and larger communities of color (Grunwald and Rappaport, 2020).

Although empirical literature on the impacts of various decertification systems is virtually nonexistent, research on officer misconduct illustrates the importance of strengthening decertification regimes. Police officers who misuse force once are more likely to do so again, meaning that officers who are rehired following police department separation are more likely than others to commit serious acts of misconduct (Carton et al., 2016; McElvain and Kposowa, 2008; Rozema and Schanzenbach, 2019). In a study focused on instances of repeat police sexual violence (PSV), researchers found that repeat PSV offenders were more likely to have had a previous police position that they left because of allegations of PSV (Rabe-Hemp and Braithwaite, 2012). Further, some research supports the notion that an officer's exposure to police misconduct may engender misconduct in others, finding that officers who are rehired after serious misconduct may increase the likelihood of misconduct by colleagues in their new departments (Wood et al., 2019; Patel, 2020).

## POLICY MEASURES

In the past year, strengthening decertification regimes has become a focus of police reform legislation at both the federal and state levels. The George Floyd Justice in Policing Act (JIPA, H.R. 1280), passed in the U.S. House of Representatives on March 4, 2021, would establish a stand-alone National Police Misconduct Registry containing records of all complaints against police officers, whether substantiated, pending, or unfounded. This would bypass some of the limitations of the National Decertification Index. Federal justice grants to states and localities would be conditional on contributing records of complaints (James and Finklea, 2021). President Joe Biden and Vice President Kamala Harris have indicated that they would support such a registry (Ingram, 2020).

At the state level, virtually every legislature is considering or has recently passed bills to establish or strengthen their decertification regimes (CA SB 2, WA SB 5051). States are making their hiring processes more rigorous by improving background investigations of officers (AK S 81) and prohibiting departments from hiring officers who have been previously discharged or accused of misconduct (AK S 2, KY S 233, KY H 301, AZ S 1590, CA A 17, TN S 461). Proposed reforms to decertification processes include reducing the number of appeals available to decertified officers (MT D 448) and building a degree of community oversight into disciplinary reviews (OR S 621). States are also addressing the information shortfalls by establishing misconduct registries (NJ A 4598, NY S 2794, SC S 275), mandating agency reporting to POST (IN S 308, AZ H 2699), and expanding the investigative powers of licensing review panels (NY A 5417). In addition, legislatures are expanding the grounds for decertification (HI S 532) and explicitly stating that decertification conditions are not subject to restriction through collective bargaining (IL PA 101-0652, H 2920).

This legislative fervor and the relative paucity of decertification literature point to a clear opportunity for descriptive and evaluative research to capture the scope and impact of these proposals. In fact, decertification



is rife with uncertainties worthy of rigorous inquiry. Potential research questions include: what are the particular forms of past misconduct that put an officer at higher risk of future misconduct? Do more rigorous decertification regimes alter the pool of prospective officers? Do tougher decertification standards influence police behavior, acting as a deterrent to misconduct? If so, how?

## Critical Policy Elements

- + States should establish certification processes that require prospective officers to complete a background check and psychological evaluation before attending police academies that provide certification. Such processes may preclude the need for decertification on the back end.
- + Decertification criteria should extend beyond criminal activity to include other types of misconduct, including sustained findings of excessive force, making false statements in a legal proceeding, falsification of evidence, and acts of sexual misconduct. States should clearly communicate the grounds for mandatory and discretionary decertification to officers and the public.
- + The federal government should promulgate baseline national decertification standards. A national, federally funded and publicly accessible police misconduct registry should be established and should list officer misconduct investigations and their dispositions. Agencies should be encouraged to contribute records through a combination of federal funding incentives and mandatory state reporting laws. Note: In [some states](#), the establishment of a public registry will require lawmakers to rescind existing laws that prohibit disclosure of discipline findings.
- + State agencies charged with administering decertification processes should be funded to investigate local agencies' compliance with reporting requirements, and corrective mechanisms should be established to bring local agencies into compliance. States should require local agencies to consult state and national police misconduct registries during their hiring processes.
- + States should create a presumption of decertification during the course of the lengthy appeals process for certain particularly egregious allegations of misconduct, prohibiting officers from employment during the appeals process.
- + Members of the public should be able to submit a complaint to the state board independent of the local law enforcement agency, which should automatically trigger an investigation.
- + Police officers should be required to self-report to their state POST when they are terminated from their agency, arrested, or convicted of any crime; any of these events should automatically trigger an investigation by decertification review panels.
- + Decertification review panels should include non-police representatives, including members of heavily policed communities. Decertification review panels should be given investigative powers and have the authority to suspend a license and impose other remedies in lieu of decertification.
- + Decertification regimes should mandate decertification in cases for which officers have been separated from their agencies for misconduct. They should also close the resignation loophole, which allows officers to avoid decertification when they resign in lieu of dismissal while an investigation is pending.



## Expected Impacts

### PREVENTING MISUSE OF FORCE

Research indicates that police officers who misuse force once are more likely to do so again. Decertifying officers, particularly those who misuse force, may prevent further misuse of force.

### ENHANCING TRANSPARENCY AND ACCOUNTABILITY

Clear and robust decertification standards, decertification processes that are well-funded and consistently pursued, and the consistent use of misconduct databases to ensure decertified officers are not rehired will enhance police accountability and transparency.

### STRENGTHENING COMMUNITY TRUST

Effective decertification processes hold officers and agencies accountable and deter misconduct, which is likely to strengthen community trust.

### REDUCING RACIAL DISPARITIES

There is evidence that police officers who are terminated from one department but rehired elsewhere are more likely to find work in smaller departments with fewer resources and larger communities of color. Strengthening decertification regimes such that these officers, who are more likely to commit further misconduct, are not employable at other police agencies may reduce the likelihood that misconduct is concentrated in these diverse communities. However, it is also possible that decertification could be pursued in ways that disproportionately target police officers of color.

### ENSURING OFFICER SAFETY

Although it is difficult to predict the degree to which strengthening decertification enhances officer safety, it stands to reason that officers who engage in the type of conduct that could lead to decertification are likely to jeopardize other officers' safety through misuse of force, poor judgement, and impulsiveness.

### PROMOTING PUBLIC SAFETY

To the extent that certification standards and decertification processes improve police legitimacy, these approaches may indirectly improve public safety.

## Endnotes

1 See Illinois HB3653 at: <https://www.ilga.gov/legislation/101/HB/PDF/10100HB3653lv.pdf>.

2 For more information about the National Decertification Index, see <https://www.iadlest.org/our-services/ndi/about-ndi>.



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## About The Task Force

The independent **Task Force on Policing** was launched in November 2020 by the **Council on Criminal Justice**. Its mission is to identify the policies and practices most likely to reduce violent encounters between officers and the public and improve the fairness and effectiveness of American policing. The **11 Task Force members** represent a diverse range of perspectives and experience and include law enforcement leaders, civil rights advocates, researchers, a former mayor, and community members who have lost loved ones to police violence. The Council staffs the Task Force, and the **Crime Lab** at the University of Chicago's Harris School of Public Policy is serving as its research partner.

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