

## Key Components for Law Enforcement Decertification in Illinois

Forty-five states<sup>1</sup> currently have some system for law enforcement officer decertification or licensing. A comprehensive law enforcement certification system can improve accountability, public trust in law enforcement, and public safety. That's not where law enforcement officer certification and decertification is in Illinois today. Based on the national experience, we've identified four ways that Illinois law on certification should be strengthened.

### **1. Professional Conduct: State law should establish higher standards of professional conduct to retain certification.**

- *Why it's key:* Law enforcement must have the trust of the public to be effective; grounds for decertification should be broad enough to cover conduct that would demonstrate that an officer could not be trusted to ensure public safety. Current grounds for decertification in Illinois are severely limited, covering only felonies, some misdemeanors, and perjury in a murder trial.<sup>2</sup> That's far less than the potentially disqualifying conduct covered by other state decertification and licensing schemes.
- *What state law should include:* (These are illustrative examples and by no means exhaustive.)
  - **Add misdemeanors like intimate partner violence and driving under the influence** as grounds for mandatory decertification, joining the many states that already do.<sup>3</sup>
  - **Include grounds for decertification that cover noncriminal conduct that harms the public or violates public trust in law enforcement;** add both discretionary language and also expand mandatory decertification for specifically enumerated offenses.
    - Including discretionary language would allow the board to consider some noncriminal conduct that may demonstrate a sufficiently serious violation of public trust to be grounds for decertification, as recognized by states like Georgia<sup>4</sup> and Arizona.<sup>5</sup>
    - Including a narrow range of specific violations and circumstances that would be mandatory grounds for decertification would establish a clear statewide baseline of unacceptable behavior, which would create a higher standard of conduct and increase public trust. Mandatory grounds for decertification might include serious or repeated instances of discriminatory conduct, sexual misconduct, and excessive force, which are all bases in Florida.<sup>6</sup>

### **2. Comprehensive Process: State law should provide for a fair and comprehensive decertification process.**

- *Complaint Initiation:* **Ensure ILETSB receives sufficient reports.**
  - *Why it's key:* ILETSB needs to receive information about all possible instances of decertifiable conduct to actually enforce the decertification regime. Currently, the law requires that local agencies self-report, and that hasn't worked—the failure of local departments to investigate or report decertifiable conduct “is the single biggest roadblock to an effective decertification program around the country.”<sup>7</sup> ILETSB should be able to consider any reports of potentially decertifiable conduct without unnecessary limitations. And accepting direct public complaints improves transparency and builds public trust in law enforcement.

- What state law should include:
  - **Permit ILET SB to consider complaints from all sources, including civilians and involved legal entities.** Civilians should be able to report directly to ILET SB, just as they can in other states,<sup>8</sup> and just as they can in Illinois for other professional licensing regimes—like the ARDC for lawyers. Other legal entities should also be able to report, including judges, state’s attorneys’ offices, public defenders, and oversight agencies like COPA.
  - **Mandate reporting for local police departments and individual officers.** An officer’s failure to report grounds for mandatory decertification should itself be grounds for decertification.
  - **ILET SB must retain complaints that do not result in investigation,** like in Washington,<sup>9</sup> to allow the board to detect patterns or assess an officer’s conduct in the aggregate.
- Investigations & Hearings: **Equip the system with sufficient resources to conduct investigations and hearings in a professional and transparent way.**
  - Why it’s key: A decertification system cannot be effective without the resources to fairly and adequately conduct investigations and hearings. Currently, ILET SB relies on an appointed task force composed exclusively of sworn officers to conduct investigations.
  - What state law should include:
    - **Provide sufficient investigative capacity, with a qualified staff of professional civilian investigators.** The system can’t operate independently or function effectively if it relies exclusively on appointed law enforcement to conduct day-to-day investigations and hearings. Including civilian investigators is key to prevent bias or the appearance of bias.
    - **Provide sufficient staffing and resources for investigations and hearings conducted by qualified career professionals,** like administrative law judges, to ensure independence and effective functioning.

### 3. Civilian Engagement: State law should deepen civilian engagement in the certification and decertification process.

- Why it’s key: Civilian participation in ILET SB’s process and decisionmaking will help ensure that oversight is untainted by bias or the appearance of bias. Currently in Illinois, there are no ILET SB seats for members of the public who are not affiliated with law enforcement.
- What state law should include:
  - **Reserve at least half of ILET SB seats for members of the public who are not affiliated with law enforcement.** At least half of states with decertification schemes already require public representation on their police officer standards and training boards;<sup>10</sup> Illinois does not—and should. In civilian oversight boards around the country—those that investigate allegations of police misconduct or that make decisions about police discipline—creating a substantial role for civilians is a key part of increasing public trust in the system. This should include representation on ILET SB and should also include strong representation for members of the public on any certification review panel.
  - **Require professional diversity among members.** ILET SB should include members from a diverse range of professional backgrounds with demonstrated experience in community engagement or organizing, law, public policy, social work, psychology, mental health, and/or civil rights.<sup>11</sup>
  - **Require racial and gender diversity among members.** States including Washington<sup>12</sup> and Colorado<sup>13</sup> include provisions that aim to ensure there is representation from these historically underrepresented groups on police officer standards and training boards.

#### 4. Public Trust & Transparency: State law should require greater transparency in the certification and decertification process.

- *Why it's key*: Increased transparency promotes accountability, increases public trust, and makes it easier for Illinois law enforcement officers to police effectively. Current law requires Illinois to maintain a database of officers who were terminated for violations of law or policy, or resigned under investigation for certain felonies.<sup>14</sup> But the database is only available to the heads of law enforcement agencies, not to private employers or the public. In addition, the database does not include valuable data about police discipline, which would increase public knowledge and trust.
- *What state law should include*:
  - **Make the names of decertified officers publicly available**, like other states do,<sup>15</sup> and like Illinois does for lawyers, in order to increase access to information for potential employers and to advance the ultimate goals of accountability and public safety.
  - **Expand data published on investigations, hearings, and final decisions**. Publicly available data should include aggregate data regarding the number of complaints received, the source of those complaints, the number of investigations initiated and completed, the number of hearings and the results, and outcome summaries.

With these four key components, a state decertification system can improve accountability, public trust in law enforcement, and public safety in Illinois.

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<sup>1</sup> The five states that do not have decertification schemes are Massachusetts, California, New Jersey, Rhode Island, and New York. New York's regulations provide for a statewide misconduct database, but there is not a clear decertification mechanism. Massachusetts and California are considering legislation that would implement a decertification mechanism.

<sup>2</sup> 50 ILCS 705/6.1(a), (f).

<sup>3</sup> States including Idaho (IDAPA 11.11.01(110)), Minnesota (Minn. Admin. Code 6700.1600), Kansas (Kan. Stat. § 106-2-2a), New Hampshire (N.H. Code Admin. R. Pol. 402.02(a)(4)), and Oregon (Or. Admin. R. 259-008-0300) provide for revocation based on misdemeanors related to intimate partner violence. States including Georgia (O.C.G.A. § 35-8-7.1, POST Rules 464-2-.01(r)), New Hampshire (N.H. Code Admin. R. Pol. 402.02(a)(4)), and New Mexico (N.M. Stat. § 29-7-13(A)) provide for revocation based on misdemeanors related to driving under the influence.

<sup>4</sup> O.C.G.A. § 35-8-7.1(a)(6) (grounds for decertification include "unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public" that need not result in actual injury, including "any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer").

<sup>5</sup> Ariz. Admin. Code § R13-4-109 (grounds for decertification include "[e]ngaging in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession").

<sup>6</sup> Fla. Admin. Code R.11B-27.0011.

<sup>7</sup> Roger Goldman, *A Model Decertification Law*, 32 *St. Louis U. Pub. L. Rev.* 147, 153 (2012).

<sup>8</sup> *See, e.g.*, Ariz. Rev. Stat. 41-1822(C)(1) (authorizing board to "receive complaints of peace officer misconduct from any person"); Florida (<https://www.fdle.state.fl.us/CJSTC/Professional-Compliance/PC-Initiation-of-Misconduct.aspx>). Missouri accepts complaints from any source on their POST website (<https://dps.mo.gov/dir/programs/post/disciplinary.php>), as does Texas (<https://www.tcole.texas.gov/content/complaint-procedures>).

<sup>9</sup> RCW 43.101.135.

<sup>10</sup> States include Arizona, Florida, Kansas, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Washington, Arkansas, Kentucky, Tennessee, Texas, Kentucky, Tennessee, and Texas. States like Colorado and Connecticut require five public members. Conn. Gen. Stat. § 7-294(b)(a)(7) (2019); Colo. Rev. Stat. 24-31-302(3).

<sup>11</sup> The Chicago Police Board Member Selection criteria are a good model for this type of requirement.

[https://www.chicago.gov/content/dam/city/depts/cpb/supp\\_info/Selection\\_criteria\\_PB\\_Members\\_Final\\_28FEB2020.pdf](https://www.chicago.gov/content/dam/city/depts/cpb/supp_info/Selection_criteria_PB_Members_Final_28FEB2020.pdf).

<sup>12</sup> RCW 43.101.030.

<sup>13</sup> Colo. Rev. Stat. § 24-31-302 (2017).

<sup>14</sup> 50 ILCS 705/6.2.

<sup>15</sup> States like Michigan, Colorado, and Oregon publish names of decertified officers, either as a list or in a searchable format.