

Officer Discipline and Decertification

Model Legislation

WHO WE ARE

The Policing Project at NYU School of Law partners with communities, lawmakers, and the police to enhance safety, accountability, and transparency in policing. Our team of attorneys, advocates, and community organizers is ready to help you draft and pass legislation that protects safety and addresses community concerns about aggressive policing.

LEGISLATION@POLICINGPROJECT.ORG

Derek Chauvin, the police officer who murdered George Floyd, had at least 18 prior complaints filed against him with the Minneapolis police, including eight inappropriate force incidents. At a previous agency, the officer who killed Tamir Rice had been found to be emotionally unfit to be a police officer.

We've seen this pattern repeat itself time and again. The failure to hold officers accountable for misconduct puts communities at risk, and undermines trust in the police. Police harm disproportionately affects communities of color, with Black men 2.5 times more likely than white men to be killed by police.

There is a solution. The "Officer Discipline and Decertification" statute makes it easier to hold officers accountable, and addresses the "wandering officer" problem by ensuring that officers with a history of serious misconduct are no longer able to carry a badge and gun.

In nearly every state, police officers are licensed ("certified") by the state's Peace Officer Standards and Training Board ("POST board"). And in most states, the POST is also authorized to revoke or suspend an officer's license.

However, in many states, the statutory grounds for suspending an officer's certification—or "decertifying" the officer—are exceptionally narrow (e.g., the officer has to have been convicted of a felony), making it difficult for the POST board to hold officers accountable for misconduct. In other states, POSTs never learn about misconduct in the first place, making it impossible for them to do their jobs.

Additionally, statutes rarely address the "wandering officer" problem: officers resign from an agency or are terminated for misconduct, but they simply pick up and move to a neighboring jurisdiction, where the misconduct too often continues.

The Officer Discipline and Decertification statute requires law enforcement agencies to conduct investigations before hiring new officers, and creates real accountability for an officer's misconduct through POST boards—from comprehensive background checks during hiring, to information sharing and tracking patterns of complaints, to suspending and decertifying officers, and prohibiting employment in adjacent careers.

Background checks: When agencies don't do their due diligence, they can end up hiring officers who have engaged in serious misconduct. The statute ensures agencies conduct a rigorous background check, including a criminal history check, and a review of all past performance evaluations, complaints, and investigatory records. Additionally, the statute requires agencies to communicate with past law enforcement employers, and in turn requires those past employers to provide the information requested.

Information sharing: When agencies don't share information about misconduct with the state POST, it is difficult to hold officers accountable. The statute sets forth a robust information sharing process and requires agencies to inform the POST of: (1) officer separation from the agency and the basis for leaving, (2) any disciplinary action taken against an officer, (3) use of force resulting in serious injury or death, and (4) any other information that provides a basis for POST discipline of an officer. It also allows members of the public to submit complaints directly to the POST. Finally, the statute requires the POST to maintain a database of all complaints received, and to track and investigate patterns of misconduct.

Ground for decertification and lesser discipline: Many states only require decertification when officers are convicted of a felony or specified misdemeanor—a high bar that is rarely achieved. This statute expands the required grounds for decertification to include other severe misconduct—such as planting evidence, or using excessive force that results in death, regardless of whether the officer is criminally prosecuted. And it then gives the POST the flexibility to choose among a variety of disciplinary options (e.g. decertification, suspension, or additional training) for a still broader range of misconduct, including sexual harassment, racial profiling, and failure to intervene when another officer uses excessive force.

Employment in adjacent professions: Too often police officers whose certification is suspended or revoked for misconduct get rehired in adjacent criminal justice professions such as school resource officer, correctional officer, etc. They are given the power to use force once again, and misconduct and abuse continues. The statute ensures that if the officer is prevented from being a law enforcement officer, the POST board also suspends/revokes certification to serve in adjacent professions.

Transparency: The public is often kept in the dark about officer discipline and complaints. This statute requires that the status, underlying nature, and results of disciplinary hearings be published, and for the public to be made aware of reports of alleged misconduct received by the POST. Additionally, under the statute, meetings of the POST are open to the public.