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## A Model Decertification Law

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## A MODEL DECERTIFICATION LAW

ROGER L. GOLDMAN\*

### INTRODUCTION

In 1960, New Mexico became the first state to grant authority to revoke the license of a peace officer for serious misconduct.<sup>1</sup> Revocation can prevent officers who were fired from one state department for misconduct from getting rehired by another department.<sup>2</sup> Today, forty-three other states have joined New Mexico by authorizing a state agency, typically called a Peace Officers Standards and Training Commission (POST),<sup>3</sup> to investigate and hold a hearing to determine whether an officer should lose his or her license.<sup>4</sup>

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1. RAYMOND A. FRANKLIN ET. AL., INT'L ASS'N OF DIRS. OF LAW ENFORCEMENT STANDARDS & TRAINING, 2009 SURVEY OF POST AGENCIES REGARDING CERTIFICATION PRACTICES 22 (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/227927.pdf>.

2. *Id.* at 15–17.

3. Most states have POST websites, however, the information differs among the states. ALA. PEACE OFFICER STANDARDS & TRAINING COMM'N, <http://www.apostc.state.al.us/> (last visited Jan. 10, 2013); DIV. ALASKA ST. TROOPERS, <http://www.dps.state.ak.us/ast> (last visited Jan. 10, 2013); ARIZ. PEACE OFFICER STANDARDS & TRAINING BD., <http://www.azpost.state.az.us> (last visited Jan. 10, 2013); ARK. COMM'N ON LAW ENFORCEMENT STANDARDS & TRAINING, <http://www.clest.org/Pages/default.aspx> (last visited Jan. 10, 2013); CAL. COMM'N ON PEACE OFFICER STANDARDS & TRAINING, <http://www.post.ca.gov> (last visited Jan. 10, 2013); COLO. PEACE OFFICER STANDARDS & TRAINING BD., [http://www.coloradoattorneygeneral.gov/departments/criminal\\_justice/post\\_board](http://www.coloradoattorneygeneral.gov/departments/criminal_justice/post_board) (last visited Jan. 10, 2013); CONN. POLICE OFFICER STANDARDS & TRAINING COUNCIL, <http://www.post.state.ct.us> (last visited Jan. 10, 2013); DEL. ST. POLICE, <http://dsp.delaware.gov> (last visited Jan. 10, 2013); FLA. CRIM. JUSTICE STANDARDS & TRAINING COMM'N, <http://www.fdle.state.fl.us/Content/getdoc/91a75023-5a74-40ef-814d-8e7e5b622d4d/CJSTC-Home-Page.aspx> (last visited Jan. 10, 2013); GA. PEACE OFFICER STANDARDS & TRAINING COUNCIL, <http://www.gapost.org> (last visited Jan. 10, 2013); HAW. PUB. SAFETY DEP'T, <http://hawaii.gov/psd> (last visited Jan. 10, 2013); IDAHO PEACE OFFICER STANDARDS & TRAINING, <http://www.post.idaho.gov> (last visited Jan. 10, 2013); ILL. LAW ENFORCEMENT TRAINING & STANDARDS BD., <http://www.ptb.state.il.us> (last visited Jan. 10, 2013); IND. LAW ENFORCEMENT ACAD., <http://www.in.gov/ilea> (last visited Jan. 10, 2013); IOWA LAW ENFORCEMENT ACAD., <http://www.ileatraining.org> (last visited Jan. 10, 2013); KAN. LAW ENFORCEMENT TRAINING CTR., <http://www.kletc.org> (last visited Jan. 10, 2013); KY. ST. POLICE ACAD., <http://www.kentuckystatepolice.org/academy.htm> (last visited Jan. 10, 2013); LA. PEACE OFFICER STANDARDS & TRAINING COUNCIL, <http://www.lcle.la.gov/programs/post.asp> (last visited Jan. 10, 2013); ME. CRIM. JUSTICE ACAD., <http://www.maine.gov/dps/mcja> (last visited Jan. 10, 2013); MD. POLICE & CORRECTIONS TRAINING COMM'NS, <http://www.dpsscs>.

state.md.us/aboutdpscs/pct (last visited Jan. 10, 2013); MASS. MUN. POLICE TRAINING COMM'N, <http://www.mass.gov/eopss/law-enforce-and-cj/law-enforce/mptc> (last visited Jan. 10, 2013); MICH. COMM'N ON LAW ENFORCEMENT STANDARDS, <http://www.michigan.gov/mcoles> (last visited Jan. 10, 2013); MINN. BD. PEACE OFFICER STANDARDS & TRAINING, <https://dps.mn.gov/entity/post/Pages/default.aspx> (last visited Jan. 10, 2013); MISS. LAW ENFORCEMENT OFFICERS' TRAINING ACAD., <http://www.dps.state.ms.us/highway-patrol/training-academies/mleota/> (last visited Jan. 10, 2013); MO. PEACE OFFICER STANDARDS & TRAINING, <http://dps.mo.gov/dir/programs/post> (last visited Jan. 10, 2013); MONT. PUB. SAFETY OFFICER STANDARDS & TRAINING, <https://doj.mt.gov/post/> (last visited Jan. 10, 2013); NEB. COMM'N ON LAW ENFORCEMENT & CRIM. JUSTICE, <http://www.ncc.state.ne.us> (last visited on Jan. 10, 2013); NEV. COMM'N ON PEACE OFFICER STANDARDS & TRAINING, <http://www.post.state.nv.us> (last visited Jan. 10, 2013); N.H. POLICE STANDARDS & TRAINING COUNCIL, <http://www.pstc.nh.gov/index.htm> (last visited Jan. 10, 2013); N.J. DIVISION OF CRIM. JUSTICE POLICE TRAINING COMM'N, <http://www.state.nj.us/lps/dcj/njptc/home.htm> (last visited Jan. 10, 2013); N.M. DEP'T OF PUB. SAFETY & RECRUITING DIV., <http://www.dps.nm.org/training> (last visited Jan. 10, 2013); N.Y. DIV. OF CRIM. JUST. SERVS. OFFICE OF PUB. SAFETY, <http://www.criminaljustice.ny.gov/ops/> (last visited Jan. 10, 2013); N.C. LAW ENFORCEMENT TRAINING & STANDARDS, <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards.aspx> (last visited Jan. 10, 2013); N.D. PEACE OFFICER STANDARDS & TRAINING BD., <http://www.post.nd.gov/> (last visited Jan. 10, 2013); OHIO PEACE OFFICER TRAINING COMM'N, <http://www.ohioattorneygeneral.gov/OPOTC> (last visited Jan. 10, 2013); OKLA. COUNCIL ON LAW ENFORCEMENT EDUC. & TRAINING, <http://www.ok.gov/cleet> (last visited Jan. 10, 2013); OR. DEP'T OF PUB. SAFETY STANDARDS & TRAINING, <http://www.oregon.gov/dpsst/Pages/index.aspx> (last visited Jan. 10, 2013); PA. MUN. POLICE OFFICERS' EDUC. & TRAINING COMM'N, <http://www.mpoetc.state.pa.us> (last visited Jan. 10, 2013); R.I. MUN. POLICE TRAINING ACAD., <http://www.rimpa.ri.gov> (last visited Jan. 10, 2013); S.C. CRIM. JUST. ACAD., <http://www.sccja.sc.gov> (last visited Jan. 10, 2013); S.D. LAW ENFORCEMENT OFFICERS STANDARDS & TRAINING COMM'N, <http://dci.sd.gov/LawEnforcementTraining/StandardsandTrainingCommission.aspx> (last visited Jan. 10, 2013); TENN. PEACE OFFICERS STANDARDS & TRAINING COMM'N, <http://www.tn.gov/commerce/let/post> (last visited Jan. 10, 2013); TEX. COMM'N ON LAW ENFORCEMENT OFFICER STANDARDS & EDUC., <http://www.tcleose.state.tx.us> (last visited Jan. 10, 2013); UTAH PEACE OFFICER STANDARDS & TRAINING, <http://publicsafety.utah.gov/post/index.html> (last visited Jan. 10, 2013); VT. CRIM. JUST. TRAINING COUNCIL, <http://vcjtc.vermont.gov> (last visited Jan. 10, 2013); VA. DEP'T OF CRIM. JUSTICE SERVS., <http://www.dcjs.virginia.gov> (last visited Jan. 10, 2013); WASH. ST. CRIM. JUST. TRAINING COMM'N, <https://fortress.wa.gov/cjtc/www> (last visited Jan. 10, 2013); W. VA. LAW ENFORCEMENT PROF. STANDARDS PROGRAM, <http://www.djcs.wv.gov/law-enforcement-professional-standards/Pages/default.aspx> (last visited Jan. 10, 2013); WIS. DEP'T OF JUSTICE TRAINING & STANDARDS BUREAU, <http://www.doj.state.wi.us/dles/tns> (last visited Jan. 10, 2013); WYO. LAW ENFORCEMENT ACAD., <http://wleacademy.com> (last visited Jan. 10, 2013).

4. ALA. CODE § 36-21-45 (2012); ALASKA STAT. § 18.65.240 (2010); ARIZ. REV. STAT. ANN. § 41-1822 (Supp. 2011); ARK. CODE ANN. §§ 12-9-602, 12-9-603 (2009); CAL. GOV'T CODE § 1029 (West Supp. 2012); CAL. PENAL CODE § 13510.1 (West 2012); COLO. REV. STAT. § 24-31-305(2)(a) (2012); CONN. GEN. STAT. § 7-294d (2011); DEL. CODE ANN. tit. 11, § 8404 (Supp. 2010); FLA. STAT. § 943.1395 (2012); GA. CODE ANN. § 35-8-7.1 (2012); IDAHO CODE ANN. § 19-5109 (Supp. 2012); 50 ILL. COMP. STAT. § 705 / 6.1 (2012); IND. CODE §§ 5-2-1-12, 5-2-1-12.5 (2012); IOWA CODE §§ 80B.11, 80B.13 (2011); KAN. STAT. ANN. § 74-5616 (2012); KY. REV. STAT. ANN. §§ 15.391, 15.392 (West Supp. 2012); LA. ADMIN. CODE tit. 22, pt. III, § 4731 (2011); ME. REV. STAT. ANN. tit. 25, § 2806 (2011); MD. CODE ANN., PUB. SAFETY § 3-212 (LexisNexis 2011); MICH. COMP. LAWS ANN. § 28.609b (West 2012); MINN. STAT. §§

The process is similar to the ability of countless other state occupation and licensing boards to revoke the license of professionals within their jurisdiction—lawyers, doctors, accountants, barbers, among others.<sup>5</sup> This Article proposes the four essential features of an effective decertification law: first, the POST should have jurisdiction over a number of criminal justice occupations; second, the POST must be able to revoke licenses for a broad range of police misconduct; third, the POST must have a combination of benefits and consequences to get police chiefs and sheriffs to report decertifiable conduct; and fourth, there need to be penalties to address the persistent lack of compliance by Police Chiefs who fail to report and investigate misconduct.

The first question a legislator in a state without an effective decertification law would ask is: Why is there a need for such a law? The legislator would likely want to know why a chief or sheriff would be willing to hire an officer previously fired from a department for misconduct and subject the department to a civil suit for wrongful hiring. The answer is that the officer is in possession of a state certificate that indicates he has completed his state-mandated academy training. A chief of a financially strapped department, given the choice of hiring a certified but questionable officer or hiring a brand new recruit, knows if he hires the latter he may have to pay for the recruit's training as well as his salary while the recruit attends the academy. Thus, he has an incentive to ignore the prior misconduct of the certified officer. One police chief justified the hiring of an obviously unfit officer who shot and killed someone while employed by the new department by stating, “[h]e was never found guilty of anything. Our policy here is that if the man comes to us qualified, we take it from there and make our own judgment.”<sup>6</sup> Furthermore, an

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626.8431, 626.8432 (2011); MISS. CODE ANN. § 45-6-7 (2011); MO. REV. STAT. § 590.090 (Supp. 2011); MONT. CODE ANN. § 44-4-403 (2011); NEB. REV. STAT. §§ 81-1403, 81-1404 (Supp. 2011); NEV. REV. STAT. ANN. §§ 289.510, 289.570, 289.580 (West Supp. 2012); N.H. REV. STAT. ANN. § 188-F:26 (2008); N.M. STAT. ANN. § 29-7-4 (2011); N.C. GEN. STAT. ANN. § 17C-6 (West 2011); N.D. CENT. CODE § 12-63-12 (Supp. 2012); OHIO REV. CODE ANN. § 109.77 (West Supp. 2012); 2012 Okla. Sess. Law Serv. 84 (West); OR. REV. STAT. § 181.662 (2011); 53 PA. CONS. STAT. § 2164 (2012); S.C. CODE ANN. § 23-23-80 (Supp. 2011); S.D. CODIFIED LAWS § 23-3-35 (2006); TENN. CODE ANN. § 38-8-104 (2010); TEX. OCC. CODE ANN. §§ 1701.351, 1701.501, 1701.502, 1701.503 (West 2011); UTAH CODE ANN. § 53-6-211 (West 2012); VT. STAT. ANN. tit. 20, § 2355 (2011); VA. CODE ANN. §§ 9.1-102 (2012); WASH. REV. CODE § 43.101.105 (2012); W. VA. CODE §§ 30-29-3, 30-29-5, 30-29-11 (2012); WIS. STAT. § 165.85 (2011); WYO. STAT. ANN. § 9-1-704 (2011).

5. See, e.g., N.Y. JUD. CT. ACTS LAW § 90.2 (McKinney 2002) (granting the Supreme Court the power to disbar attorneys); MO. REV. STAT. § 326.313 (Supp. 2011) (granting the Missouri Board of Accountancy power to revoke licenses from CPA firms); 225 ILL. COMP. STAT. 410 / 4-7 (2012) (granting Illinois Barber Board power to revoke barber licenses).

6. Paul Wagman & William Freivogel, *7 of Town's Officers Had Earlier Trouble*, ST. LOUIS POST DISPATCH, Mar. 30, 1980, at 11A.

employee fired from a previous department for serious misconduct is not going to get a job with a department that has enough money to attract candidates with spotless records. Thus, the cash-poor department is able to hire him at a discounted rate.

## I. A MODEL LAW

### A. *What Criminal Justice Officers Should be Subject to Decertification?*

In addition to peace officers (i.e., police officers, deputy sheriffs, and state troopers), some states also have the authority to decertify other types of law enforcement personnel. This includes correctional officers, parole and probation officers, private security officers, communications personnel, juvenile justice officers, campus police, courtroom security officers, and others.<sup>7</sup> The most common exemptions from coverage are elected sheriffs and some state law enforcement officers.<sup>8</sup> The trend is to increase the scope of coverage to prevent a decertified police officer from getting a job in another criminal justice occupation. Why should a police officer, decertified for using excessive force against an arrestee, be able to get a job as a correctional officer? To prevent this from happening, state decertification laws should have jurisdiction over a broad range of criminal justice occupations.

### B. *What Kinds of Misconduct Should Result in Decertification?*

There are three approaches taken by states in terms of what type of misconduct leads to decertification. In the first category, an officer may be decertified for criminal convictions.<sup>9</sup>

These states decertify for all felony convictions; with respect to misdemeanors, some specify certain misdemeanors while others decertify for

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7. *See, e.g.*, ALASKA STAT. § 18.65.245 (2010) (granting authority to revoke certification of municipal correctional, correctional, probation, or parole officers); OR. REV. STAT. §§ 181.610(16), 181.662 (2011) (granting authority to revoke certification of parole and youth correction officers); 53 PA. CONS. STAT. §§ 2162, 2164 (2012) (granting authority to revoke certification of campus police).

8. *See, e.g.*, DEL. CODE ANN. tit. 11, § 8401(5)(b) (2007) (exempting sheriffs and state security forces from the definition of police officer); TEX. OCC. CODE ANN. § 1701.003(a)(2) (West 2011) (exempting sheriffs holding office before Jan. 1, 1994).

9. ALA. CODE §§ 36-21-45(7), 36-21-46(5) (2001); COLO. REV. STAT. § 24-31-305(2)(a) (2012); IDAHO CODE ANN. § 19-5109(3) (Supp. 2012); 50 ILL. COMP. STAT. § 705 / 6.1(a) (2012); IND. CODE § 5-2-1-12.5 (2012); KAN. STAT. ANN. § 74-5616(c) (2012); KY. REV. STAT. ANN. § 15.391 (West 2010); LA. ADMIN. CODE tit. 22, pt. III, § 4731 (2011); MD. CODE ANN., PUB. SAFETY § 3-212(a) (LexisNexis 2011); MICH. COMP. LAWS ANN. § 28.609b (West 2012); N.D. CENT. CODE § 12-63-12(1) (2012); OHIO REV. CODE ANN. §§ 109.77(E)(4), 109.77(F)(1) (West 2002); 53 PA. CONS. STAT. § 2164(1) (2012); TEX. OCC. CODE ANN. §§ 1701.501, 1701.502, 1701.503 (West 2011); VT. STAT. ANN. tit. 20, § 2355 (2011); VA. CODE ANN. § 15.2-1707 (2008).

all misdemeanor convictions.<sup>10</sup> This is clearly unacceptable. What other occupation or profession requires a criminal conviction before the license can be revoked? If the local prosecutor is unwilling to prosecute, there is no action the state POST can take. Fortunately, a majority of decertification states have broader authority.<sup>11</sup>

In the second category are revocations that do not require a criminal conviction, but permit revocation after an administrative hearing—usually before an administrative law judge—determines the officer has engaged in statutorily prohibited conduct.<sup>12</sup> The major variation in the statutory language is between quite general and very specific conduct.<sup>13</sup> Examples of general language are: commission of any criminal offense, any act committed while on active duty or under color of law that involves moral turpitude, or engaging in conduct unbecoming a law enforcement officer.<sup>14</sup>

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10. For example, the state of Colorado allows revocation for a variety of misdemeanors, including harassment and drug possession. COLO. REV. STAT. § 24-31-305(2)(a) (2012).

11. See ALASKA STAT. § 18.65.240 (2010); ARIZ. REV. STAT. ANN. § 41-1822 (Supp. 2011); ARK. CODE ANN. §§ 12-9-602, 12-9-603 (2009); CAL. GOV'T CODE § 1029 (West 2010); CAL. PENAL CODE § 13510.1 (West 2012); CONN. GEN. STAT. § 7-294d (2011); DEL. CODE ANN. tit. 11, § 8404 (Supp. 2010); FLA. STAT. § 943.1395 (2012); GA. CODE ANN. § 35-8-7.1 (2012); IOWA CODE § 80B.13 (2011); KY. REV. STAT. ANN. §§ 15.391, 15.392 (West 2010); ME. REV. STAT. ANN. tit. 25, § 2806 (2011); MINN. STAT. §§ 626.8431, 626.8432 (2011); MISS. CODE ANN. § 45-6-7 (2011); MO. REV. STAT. § 590.090 (Supp. 2011); MONT. CODE ANN. § 44-4-403 (2011); NEB. REV. STAT. ANN. § 81-1403 (LexisNexis Supp. 2011); NEV. REV. STAT. ANN. §§ 289.510, 289.570, 289.580 (LexisNexis Supp. 2012); N.H. REV. STAT. ANN. § 188-F:26 (2008); N.M. STAT. ANN. § 29-7-4 (2011); N.C. GEN. STAT. § 17C-6 (2011); 2012 Okla. Sess. Law Serv. 84 (West); OR. REV. STAT. § 181.662 (2011); S.C. CODE ANN. § 23-23-80 (Supp. 2011); S.D. CODIFIED LAWS § 23-3-35 (Supp. 2012); TENN. CODE ANN. § 38-8-104 (2010 & Supp. 2011); UTAH CODE ANN. § 53-6-211 (West 2012); WASH. REV. CODE § 43.101.105 (2012); W. VA. CODE §§ 30-29-3, 30-29-5, 30-29-11 (2012); WIS. STAT. § 165.85 (2011); WYO. STAT. ANN. § 9-1-704 (2011).

12. ARIZ. REV. STAT. ANN. § 41-1822 (Supp. 2011); FLA. STAT. § 943.1395 (2012); GA. CODE ANN. § 35-8-7.1 (2012); ME. REV. STAT. ANN. tit. 25, § 2806 (2011); MINN. STAT. §§ 626.8431, 626.8432 (2011); MISS. CODE ANN. § 45-6-7 (2011); MO. REV. STAT. § 590.090 (Supp. 2011); MONT. CODE ANN. § 44-4-403 (2011); NEB. REV. STAT. ANN. § 81-1403 (LexisNexis Supp. 2011); N.M. STAT. ANN. § 29-7-4 (2011); 2012 Okla. Sess. Law Serv. 84 (West); S.C. CODE ANN. § 23-23-80 (Supp. 2011); S.D. CODIFIED LAWS § 23-3-35 (Supp. 2012); UTAH CODE ANN. § 53-6-211 (West 2012); W. VA. CODE §§ 30-29-3, 30-29-5, 30-29-11 (2012); WYO. STAT. ANN. § 9-1-704 (2011).

13. For an example of a general misconduct statute, see MO. REV. STAT. § 590.080 (Supp. 2011). For an example of a specific misconduct statute, see CONN. GEN. STAT. § 7-294d(c)(2) (2011).

14. See, e.g., MO. REV. STAT. § 590.080.1(3) (Supp. 2011) (providing that an officer may be decertified if he or she has “committed any act while on active duty or under color of law that involves moral turpitude”); S.D. CODIFIED LAWS § 23-3-35.3 (2012) (providing for suspension of certification for officers who “have engaged in conduct unbecoming of a law enforcement officer”).

Many states use quite specific language. For example, several states permit administrative decertification for the commission of an offense involving sexual conduct, the unjustified use of deadly force in the performance of the duties of a peace officer, or committing an act constituting perjury.<sup>15</sup> It is hard to imagine not decertifying for perjury since that officer's testimony against a criminal defendant could be impeached at trial. The sole ground for administrative revocation in Illinois is perjury—but only perjury by an officer testifying in a murder trial.<sup>16</sup>

Which is the better approach—specific or general language? The advantage of using specific language, such as commission of perjury, gives clear notice to the officer of what conduct can result in a loss of license. However, if an officer can be decertified only for specified conduct that means officers who have committed other types of misconduct may continue in law enforcement. Yet, vague language, like “conduct unbecoming,” is problematic.<sup>17</sup> One approach would be to investigate the state's practice for other professions and occupations, and then determine whether the state courts have upheld license revocations under that language. If it is good enough for doctors, it is good enough for police officers. A hybrid approach, combining revocation for specific misconduct with more general language, is probably the best solution.

In addition to revocation for convictions and administrative revocations by the state POST, the third option is to revoke the license when the officer is terminated from the agency or voluntarily leaves the agency in lieu of termination.<sup>18</sup> That is—unlike the first two approaches where it is the officer's conduct that triggers revocation—in these states, the action of the local department triggers revocation. For example, the focus is on an officer discharged from a police department for good cause.<sup>19</sup> This is the least desirable approach. Merely because a chief found there was good cause to

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15. *See, e.g.*, UTAH REV. STAT. 53-6-211(1)(f)(2012) (permitting decertification if the peace officer engages in sexual conduct while on duty); N.D. CENT. CODE § 12-63-12(1)(b) (2012) (permitting decertification for the use of unjustified deadly force in the performance of duties as a peace officer); CONN. GEN. STAT. § 7-294d(c)(2)(H) (2011) (permitting decertification for committing perjury).

16. *See, e.g.*, 50 ILL. COMP. STAT. ANN. § 705 / 6.1(h) (West 2010) (providing that a police officer “shall . . . be decertified . . . upon a determination . . . that he or she, while under oath, has knowing and willfully made false statements as to a material fact going to an element of the offense of murder.”).

17. *See, e.g.*, S.D. CODIFIED LAWS § 23-3-35.3 (2012).

18. *See, e.g.*, WIS. STAT. ANN. §165.85(3)(cm) (West 2011) (providing that the law enforcement standards board may “[d]ecertify law enforcement, tribal law enforcement, jail or juvenile detention officers who terminate employment or are terminated”).

19. *See, e.g.*, WIS. STAT. ANN. §165.85(3)(cm) (West 2011) (decertifying officers who terminate employment or are terminated); S.D. CODIFIED LAWS § 23-3-35(3) (2012) (decertifying officers who have been discharged from employment for cause).

terminate an officer does not mean the conduct leading to the termination should also require the officer's license to be revoked. The loss of a license is much more serious than the loss of a job, and good cause is so broad in scope it could mean the officer was fired merely because he did not get along with his chief. Unlike the previous two categories where the state statute defines the misconduct that can result in decertification, the local agency defines what constitutes grounds for termination and the grounds for decertification.<sup>20</sup>

*C. What Mechanisms Need to be in Place to Insure Participation by Local Departments in Decertification?*

Virtually every state POST relies on local departments to investigate and report de-certifiable conduct.<sup>21</sup> However, how likely is it that a department would report misconduct by an officer working for that department to the POST? After all, the chief hired an obviously unfit officer in the first place. Additionally, where the officer has left the department, usually resigning under threat of termination, the chief may take the view, "out of sight, out of mind." That means the officer is likely to resurface at another agency, either inside or outside the state. This is the single biggest roadblock to an effective decertification program around the country. Even states, like Florida, that have been quite successful with decertification—Florida has decertified nearly six thousand officers over the years—have struggled with this issue.<sup>22</sup> For example, a recent nine-part series in the Sarasota Herald-Tribune uncovered numerous cases of obviously unfit officers who continued to serve in law enforcement because their misconduct was not reported to the Florida POST.<sup>23</sup> Moreover, then-Missouri Auditor, now United States Senator, Claire McCaskill wrote a report critical of Missouri's POST. The audit focused on

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20. See, e.g., WIS. STAT. ANN. §165.85(3)(cm) (West 2011); S.D. CODIFIED LAWS § 23-3-35(3) (2012).

21. See Roger Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?*, 45 ST. LOUIS U. L.J. 541, 574 (2001) (citing FLA. STAT. § 943.1395(5) (2012) (providing that "[t]he employing agency must conduct an internal investigation . . . [and] must submit the investigative findings and supporting information and documentation to the commission"))).

22. E-mail from Roger Goldman, Callis Family Professor of Law, St. Louis Univ. Sch. of Law, to Glen Hopkins, Standards Bureau Chief, Fla. Dep't of Law Enforcement (Sept. 24, 2012, 16:31 CST) (on file with author); E-mail from Stacy Lehman, Training & Research Manager, Fla. Dep't of Law Enforcement, to Roger Goldman, Callis Family Professor of Law, St. Louis Univ. Sch. of Law (Oct. 3, 2012, 16:14 CST) (on file with author).

23. Part one in this series highlights one officer who, despite a record containing forty internal affairs cases—involving use of excessive force, arrests, and accusations involving domestic violence and stalking—was allowed to keep his badge. See Anthony Cormier & Matthew Doig, *Tarnished Badge, Flawed System*, SARASOTA HERALD-TRIB. (Dec. 4, 2011), <http://cops.htcreative.com/>.



small departments that were not cooperating with the state Department of Public Safety, which houses the POST.<sup>24</sup>

Why is it that some chiefs refuse to comply with POST programs? First, there is a fear of a defamation suit by the officer. However, most states grant qualified immunity to the chief for good faith reporting to the POST of the behavior in question.<sup>25</sup> Second, if the officer resigns in lieu of a hearing or prior to termination, chiefs may agree not to report the officer to POST. They reason it is quicker and, at least in the short run, cheaper to let the officer go.<sup>26</sup>

*D. What are Possible Solutions to this Persistent Lack of Compliance by Chiefs to Report and Investigate Misconduct?*

Prosecutors have a right to file criminal charges against chiefs and sheriffs, but that is politically unlikely except in the most egregious cases. Chiefs and sheriffs can be decertified by the POST for malfeasance in office.<sup>27</sup> The chief's superior, such as the city manager or mayor, may be able to investigate the chief.<sup>28</sup> In some states, a state agency has the power to investigate when the local agency does not. However, in many states that would require an increase in the POST's staff, and in a time of tightened state budgets it is not realistic. Oregon has an unusual provision that avoids criminal prosecution, but permits the imposition of a civil penalty up to \$1,500 on the police department for non-compliance.<sup>29</sup> Perhaps imposing such penalties would be more likely to get the local agency to cooperate. In extreme cases, either an entire department should be decertified, or the specific municipality should be disincorporated as a result of a failing police department.<sup>30</sup>

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24. See CLAIRE MCCASKILL, OFFICE OF THE STATE AUDITOR OF MO., AUDIT OF THE MISSOURI DEPARTMENT OF PUBLIC SAFETY'S POLICE OFFICER STANDARDS AND TRAINING PROGRAM, NO. 2005-10 (2005), available at <http://auditor.mo.gov/press/2005-10.htm> (reporting that the audit revealed 12 percent of law enforcement agencies had not complied with one or more POST related state laws).

25. See, e.g., ARIZ. REV. STAT. ANN. § 41-1829.01.C (2012) (providing that “[c]ivil liability may not be imposed on either a law enforcement agency or the board for providing information specified in subsections A and B of this section if there exists a good faith belief that the information is accurate.”).

26. See Goldman & Puro, *supra* note 21, at 549.

27. See, e.g., IDAHO CODE ANN. § 19-5109(3) (Supp. 2012) (noting that the council can decertify “any officer” who is convicted of any misdemeanor, willfully or otherwise falsifies or omits information to obtain a certified status, or violates any of the standards of conduct as established by the council’s code of ethics).

28. OR. REV. STAT. ANN. §§ 181.610, 181.620, 181.661 (West 2012).

29. OR. REV. STAT. § 181.679 (2011).

30. See, e.g., H.R. 1891, 96th Gen. Assemb., 2d Reg. Sess. (Mo. 2012). It should be noted this bill never made it out of the House of Representatives, and, thus, never became law. However, the proposed bill allowed for a city to potentially be disincorporated for failing to

## II. CONCLUSION

Every state should enact a strong decertification law that takes away the ability of unfit officers to continue in law enforcement. States should treat police professionals the way states treat other professionals. It is inexplicable that in six states, state law authorizes the power to revoke a barber's license for misconduct, but does not authorize the revocation of a police officer's license.<sup>31</sup> Policing, of all professions and occupations, has the most need for decertification because of the power granted to peace officers to arrest, search, and use deadly force. One of the primary reasons for decertification is gross abuse of the officer's power over citizens. For example, in a study of seven years of decertification in Florida, almost every decertification for mistreatment of citizens involved sexual abuse of female drivers stopped for speeding.<sup>32</sup> In those cases the decertified officer either assaulted the driver or agreed not to arrest her if she agreed to have sex with him.<sup>33</sup>

There is clearly a need to enact revocation legislation in the six states without that authority as well to broaden the grounds for revocation in the sixteen states that require a criminal conviction. Citizens groups and investigative reporters need to be on the lookout for cases where an officer is fired by one department for serious misconduct, gets rehired by another department, and then is involved in further misconduct at the new department. However, to get legislation approved—either to strengthen existing revocation laws or to enact new ones in the states without the power—there needs to be a coalition of groups concerned about the rights and liberties of citizens, police chiefs and sheriffs interested in police professionalism, and prosecutors concerned about the rule of law.

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provide satisfactory law enforcement. It should be noted the municipality, rather than the police department, would be dissolved.

31. See *infra* notes 3–4 and accompanying text; see also HAW. REV. STAT. ANN. § 438-14(a) (LexisNexis 2005); IND. CODE. ANN. § 25-1-11-12 (West 2012); N.J. STAT. ANN. §§ 45:1-1, 45:1-21 (Supp. 2012); N.Y. GEN. BUS. LAW § 441(a) (Supp. 2012); R.I. GEN. LAWS § 5-10-26 (2009), WASH. REV. CODE § 18.16.210(2) (2012).

32. See Roger Goldman & Steven Puro, *Decertification of Police: An Alternative to Traditional Remedies for Police Misconduct*, 15 HASTINGS CONST. L.Q. 45, 67–69 (1987).

33. *Id.*

