

Law Enforcement Officer Decertification



Virginia Association of Chiefs of Police
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Certification Requirements



Certification as a Virginia law enforcement officer applies to police chiefs, officers and deputy sheriffs (COV § 15.2-1705):

- U.S. citizen
- CCRE and FBI fingerprint-based background investigation
- High school or GED completion
- Valid driver's license

Certification Requirements



- Physical Exam
- At least 18 years old
- No felony record (guilty or no contest plea)
- Negative result on pre-employment drug screening
- Completion of DCJS-certified basic training and examination (COV § 15.2-1706)

Chief or Sheriff may request waiver of these requirements from DCJS for good cause shown. Requests for waiver for new officers is rare. Most waivers are related to training approval.

Decertification



COV § 15.2-1707 – requires written notice from chief or sheriff to DCJS

- Conviction/pled guilty/no contest plea to felony offense OR
- Failure to meet training requirements OR
- Refuse drug screen/positive drug screen

DCJS shall decertify on these grounds

Decertification



DCJS may decline to decertify until felony conviction or completion of appeal – may consider the likelihood of irreparable damage to the officer and seriousness of offense

§ 15.2-1708. DCJS must notify officer, who may appeal to the Board; officer must prove, by preponderance of the evidence, good cause for reinstatement

Decertification



Board shall render decision within 30 days of hearing

Any officer who is decertified may, after a period of not less than five years, petition the Board to be considered for reinstatement of certification

Code is silent on grounds for recertification

Employer Immunity



COV § 15.2-1709 – Chief or Sheriff who discloses information about a former sworn employee to a prospective law-enforcement or jail employer is immune from civil liability for disclosure

Must act in good faith

Rebuttable if disclosure was knowingly false or deliberately misleading, had malicious purpose, or violated any civil right of the former employee or appointee.

Officer Dismissal



Officer employment may be terminated, or the officer allowed to resign, for misdemeanor offenses or policy violations involving moral turpitude

Under current law, these are not grounds for a chief or sheriff to request decertification

Officers may be hired by other LE agencies

What is Moral Turpitude?



Turpitude means a corrupt or depraved or degenerate act or practice. Moral turpitude refers generally to conduct that shocks the public conscience. (U.S. Legal.com)

A phrase used in criminal law to describe conduct that is considered contrary to community standards of justice, honesty, or good morals. Crimes involving moral turpitude have an inherent quality of baseness, vileness, or depravity with respect to a person's duty to another or to society in general.

Law enforcement policies that address moral turpitude offenses that could lead to dismissal include lying, cheating, unethical behavior and conduct unbecoming a law enforcement officer

Decertification – other states



- ARIZONA: medical, physical or mental disability that affects ability to perform job; under influence of liquor on duty; offense involving dishonesty, unlawful sexual conduct, or physical violence; malfeasance, misfeasance or nonfeasance in office; “any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession”
- Reporting, notice and appeals process similar to Virginia standards

Decertification – other states



GEORGIA: The agency and the officer both have duty to report actions to state board; includes arrests, suspensions of 30 days or more for single incidents of misconduct, non-administrative demotions, terminations or resignations

Court appoints administrative hearing officer, who gives advisory opinion to Standards and Training Council; further appeal by lawsuit.

Decertification – other states



NEW HAMPSHIRE: No decertification process, but state council regulations provide that “any candidate who was ever discharged from police employment or the subject of a negotiated resignation for serious misconduct or any moral or ethical reason is ineligible for certification.”

Decertification – other states



SOUTH CAROLINA: misconduct includes

- Crime of moral turpitude;
- Unlawful use of a controlled substance;
- Repeated use of excessive force
- Dangerous and/or unsafe practices involving firearms, weapons, and/or vehicles with willful or wanton disregard for the safety of persons or property;
- Physical or psychological abuses of members of the public and/or prisoners;
- Misrepresentation of employment-related information;
- Dishonesty or untruthfulness with respect to his/her employer

Decertification – other states



- **DELAWARE:** non-mandatory reporting - convicted of a misdemeanor or offenses involving moral turpitude, involving, but not limited to, theft, fraud, or violation of the public trust, or of any drug law; professionally found psychologically or emotionally unfit; discharged from employment with a law enforcement agency for a breach of internal discipline; or has tendered a resignation prior to the entry of findings of fact concerning an alleged breach of internal discipline

Decertification – other states



TENNESSEE: Be convicted of or plead guilty or enter a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, gambling, liquor, controlled substances, or a sufficient number of misdemeanors to establish a pattern of disregard for the law (Not limited to felonies)

- OREGON: discharged for cause for Gross Negligence, Insubordination, or Incompetence or Gross Misconduct. Decertification can be extended to telecommunicators, emergency medical dispatchers and instructors. Decertification is mandatory in some cases and discretionary in other cases. State agency may conduct investigations to support decertification action.

“Brady” officers



- Brady v. Maryland - 1963 U.S. Supreme Court decision requiring investigating agencies to turn over to defense attorneys any information regarding government witness credibility and bias.
- Cases brought by officer with a record of lying may be dismissed because the officer isn't considered a credible witness

IADLEST



The International Association of Directors of Law Enforcement Standards & Training established a set of MODEL MINIMUM STANDARDS for states to use in setting decertification standards.

Goal: uniformity across the states to increase participation in the national index, and make it more useful and balanced

National Index



- Funded by BJA grant to IADLEST
- The purpose of the National Decertification Index (NDI) is to serve as a national registry of certificate or license revocation actions relating to officer misconduct. Records are provided by participating state government agencies and should be verified with the contributing authority. Inclusion does not necessarily preclude anyone from being an officer.
- The NDI currently contains 15,704 actions reported by 33 states (Source: IADLEST website)
- Inconsistency in standards/procedures across states

Legislative Considerations



The VACP has been working with DCJS to revise current law to address both certification and decertification to include conviction, guilty plea or no contest for offenses equivalent to for class 1 misdemeanors if committed in Virginia and that involved moral turpitude, or conviction for any sex offense under the laws of the Commonwealth, any other state, or the United States

Legislative Considerations



- The Virginia Department of State Police reviewed the DCJS draft, and offered amended language that created a list of “barrier crimes” based on a number of state statutes, including misdemeanors, that would be barriers to State Police employment and grounds for decertification

Legislative Considerations



- The DCJS proposal expands the list of Code violations that could result in decertification but doesn't address non-Code violations, such as lying, excessive force or insubordination
- The VSP amendments also are state Code-based, and don't include local ordinance or policy violations

Options



- Take initial steps in 2013 to amend the certification and decertification statutes to include specific misdemeanor offenses currently not in Virginia law
- Consider further expansion of state law to include language enacted by other states that addresses other non-criminal, unethical behavior