

What You Need To Know About The Decertification Process, Which is Effective July 1, 2022¹

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In 2020 and 2021, the Illinois Legislature amended the Police Training Act to: (i) provide certain requirements for hiring and retaining police officers; and (ii) the process for reporting and investigating instances of misconduct under the decertification process. Some amendments to the Police Training Act are already in effect and some other requirements are effective July 1, 2022. The following is a brief summary of the amendments to the Police Training Act that go into effect July 1, 2022 and are relevant to the employment of law enforcement officers.²

The Hiring Process

Before a law enforcement agency (LEA) can hire an individual to be a law enforcement officer (LEO),³ the chief administrative officer of the LEA or their designee must check the Officer Professional Conduct Database maintained by the Illinois Training Board to determine whether there are any reported acts of misconduct that would affect the candidate's viability for employment as a LEO.⁴ In addition, the chief administrative officer of the LEA (or their designee) must conduct a background investigation by contacting (and documenting such contact) all of the applicant's previous law enforcement employers. This documentation must be kept for a minimum of five years after the officer's termination, retirement, resignation or separation with the hiring LEA. The purpose of this requirement is to ensure that officers who have engaged in misconduct in one LEA are not hired by another LEA without the appropriate consideration of the misconduct through a thorough background investigation and evaluation of previous performance.

Professional Conduct Database

To facilitate this hiring process, beginning July 1, 2022, the Training Board shall maintain a Professional Conduct Database. The database contains information to assist a LEA in evaluating candidate's application for as position as a LEO. The Training Board will make the Professional Conduct

¹ This article is not intended to be legal advice but represents the opinion of the author of the legislative amendments to the Police Training Act. The Illinois Law Enforcement Training Board has not yet published the regulations required by these amendments as of the date of publication of this article. Those regulations may effect an interpretation of these amendments.

² "Law Enforcement agency" means any entity with statutory police powers and the ability to employ individuals authorized to make arrests. It does not include the Illinois State Police as defined in the State Police Act. A law enforcement agency may include any university, college, or community college. 50 ILCS 705/2.

³ "Law enforcement officer" means (i) any police officer of a law enforcement agency who is primarily responsible for prevention or detection of crime and the enforcement of the criminal code, traffic, or highway laws of this State or any political subdivision of this State or (ii) any member of a police force appointed and maintained as provided in Section 2 of the Railroad Police Act.

⁴ "Board" means the Illinois Law Enforcement Training Standards Board. 50 ILCS 705/2.

Database readily available to any chief administrative office (or such officer's designee) and the Illinois State Police. The Professional Conduct Database will contain the following information for each LEO:

- (i) dates of certification, decertification, and inactive status;
- (ii) each sustained instance of departmental misconduct that led to a suspension of at least 10 days or any infraction that would trigger an official or formal investigation under LEA's policy, or any allegation of misconduct regarding truthfulness as to a material fact, bias, or integrity, or any other reported violation, the nature of the violation, the reason for the final decision of discharge or dismissal, and any statement provided by the officer;
- (iii) date of separation from employment from any local or state LEA;
- (iv) the reason for separation from employment, including, but not limited to: whether the separation was based on misconduct or occurred while the law enforcement agency was conducting an investigation of the certified individual for a violation of an employing agency's rules, policy or procedure or other misconduct or improper action.

50 ILCS 705/9.2(c). Additionally, accessibility to the Professional Conduct Database is limited to the State Attorney's and the Attorney General's offices for the purpose of complying with obligations under *Brady v. Maryland*, 373 U.S. 83, (1963) or *Giglio v. United States*, 405 U.S. 150 (1972). Section 705/9.2(c)(1) specifically limits access to this database to the State's Attorney's office, the Attorney General's office and the Chief Administrative officer of an LEA or their respective designees. The Professional Conduct Database containing the information listed above should not be accessible to the public or accessible through the Illinois Freedom of Information Act. Further, Section 705/9.2 (c)(3) prohibits the Training Board or any person who receives information from the Professional Conduct Database from disclosing that information in any civil proceeding and from being required to testify in any civil proceeding regarding information contained in the database.

This amendment to the Training Act goes further to protect the confidentiality of the documents and information contained in the Professional Conduct Database and provides that the information, documents, materials, or other information in the possession or control of the Training Board (*i.e.* the entire database) are confidential by law and privileged, shall not be subject to subpoena, discovery or admissible in evidence in any private civil action when sought from the Training Board. The plain language of Section 705/9.2 (c)(3) indicates that the contents of the Professional Conduct Database cannot be used against the police officer in any subsequent civil proceeding that may be brought by any individual who believes they may have been harmed in some way by the LEO's conduct. The Board is, however, authorized to use the contents of the database to prosecute any regulatory or legal action brought as part of the Board's official duties. 50 ILCS 705/9.2(c)(3).

Publicly Accessible Database

The Professional Conduct Database, as discussed above, is not publicly accessible, however, the amendments to the Training Act provide for another database that is publicly accessible. 50 ILCS 705/9.2(d). The publicly accessible database will contain the following information:

- (i) the LEO's employing agency;
- (ii) the date of the officer's initial certification and the officer's current certification status; and
- (iii) any sustained complaint of misconduct that resulted in decertification and the date thereof.

Please note that the Board is prohibited from including any information in the publicly accessible database that would allow the public to ascertain the home address of an officer, other person or family member. The Board must make the publicly accessible database available on its website. 50 ILCS 705/9.2(d).

LEA Reporting Requirements

Beginning July 1, 2022, all LEAs and the Illinois State Police must notify the Board of any final determination of a willful violation by an LEO of department or agency policy, official misconduct, or violation of law when the conduct concerns:

- (i) a determination that leads to a suspension of at least 10 days;
- (ii) any infraction that would trigger an official or formal investigation under a LEA or Illinois State Police policy;
- (iii) there is an allegation of misconduct regarding truthfulness as to a material fact, bias, or integrity; or
- (iv) the officer resigns or retires during the course of an investigation and the officer has been served notice that the officer is under investigation.

50 ILCS 705/9.2(a). In addition, LEAs and the Illinois State Police may report to the Board any other conduct that the agency believes should be included regarding a LEO's conduct or performance and is appropriate to disseminate to another LEA regarding the LEO who is the subject of the report. 50 ILCS 705/9.2(a). The report must be made within 10 days after a final determination and final exhaustion of any administrative appeal, or the officer's resignation or retirement, and shall provide information regarding the nature of the violation. This notification to the Board does not necessarily trigger certification review. 50 ILCS 705/9.2(a).

The LEO that is the subject of the complaint will receive notification from the Board of the report. The LEO has the right to provide a statement regarding the reported violation. The LEO has 14 days from receipt of the notice to provide a written objection contesting information included in the LEA's report. The objection must be filed with the Board on a form prescribed by the Board and a copy must be served on the LEA. The LEO's objection to the report will remain in the database with the reported violation. 50 ILCS 705/9.2(b).

A LEA and the Illinois State Police are immune from liability for providing information to the Board that is consistent with the reporting criteria set forth in Section 2(a) unless that disclosure is an intentional misrepresentation of the information or the LEA engaged in gross negligence in reporting the

information. Setting aside the immunity provision, the reporting obligation has serious implications for the LEO that is the subject of the report. Therefore, to preserve the integrity of the Professional Conduct Database, the officer's reputation, and the immunity provision of this statute, a LEA should take steps to ensure that the information reported is true and accurate and reported after it is no longer appealable. 50 ILCS 705/9.2(a).

The Discretionary Decertification Process

The Board has the discretionary authority to decertify a full-time or a part-time LEO upon a determination by the Board that the LEO has:

- (i) committed an act that would constitute a felony or misdemeanor which could serve as basis for automatic decertification, regardless of whether the LEO was criminally prosecuted or terminated from their employment;
- (ii) exercised excessive use of force;
- (iii) failed to comply with the officer's duty to intervene, including through acts or omissions;
- (iv) tampered with a dash camera or body-worn camera or data recorded by a dash camera or body-worn camera or directed another to tamper with or turn off a dash camera or body-worn camera or data recorded by a dash camera or body-worn camera for the purpose of concealing, destroying or altering potential evidence;
- (v) engaged in the following conduct relating to the reporting, investigation, or prosecution of a crime: committed perjury, made a false statement, or knowingly tampered with or fabricated evidence; and
- (vi) engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public; such conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer.

50 ILCS 705/6.3 (b)(discretionary decertification conduct)⁵.

Reporting Obligation

⁵ A LEO is automatically decertified if they have been convicted of, found guilty of, entered a plea of guilty to, or entered a plea of nolo contendere to, a felony offense under the laws of this State or any other state which if committed in this State would be punishable as a felony. The Board must also ensure that no law enforcement officer is certified or provided a valid waiver if that law enforcement officer has been convicted of, found guilty of, or entered a plea of guilty to, on or after January 1, 2022 (the effective date of Public Act 101-652) of any misdemeanor specified in this Section or if committed in any other state would be an offense similar to Section 11-1.50, 11-6, 11-6.5, 11-6.6, 11-9.1, 11-9.1B, 11-14, 11-14.1, 11-30, 12-2, 12-3.2, 12-3.4, 12-3.5, 16-1, 17-1, 17-2, 26.5-1, 26.5-2, 26.5-3, 28-3, 29-1, any misdemeanor in violation of any Section of Part E of Title III of the Criminal Code of 1961 or the Criminal Code of 2012, or subsection (a) of Section 17-32 of the Criminal Code of 1961 or the Criminal Code of 2012, or to Section 5 or 5.2 of the Cannabis Control Act, or any felony or misdemeanor in violation of federal law or the law of any state that is the equivalent of any of the offenses specified therein. The Board must appoint investigators to enforce the duties conferred upon the Board by this Act. 50 ILCS 705/6.1(a).

An LEA, the Executive Director of the Board, or the State's Attorney's office is responsible for notifying the Board within 7 days after becoming aware of any violation of Section 6.3(b). The individuals who are responsible for notifying the Board include, but are not limited to, a civilian review board, an inspector general, and legal counsel for a LEA. The legal obligation of "becoming aware" of a reportable incident or information does not include information received by LEA's lawyers from the LEA when the LEA is seeking legal advice from its lawyers. In other words, a privileged conversation between a LEA and its attorney will not trigger a legal obligation to report to the Board information the attorney received during the conversation with the LEA. Further, the Illinois Attorney General's office is excluded from this obligation when functioning in its capacity as legal representation to a LEO under the State Employee Indemnification Act.

Reports From The Public

A member of the public may file a complaint against a LEO with the Board either confidentially or non-confidentially. Notwithstanding any other provision in state law or any collective bargaining agreement, the Board shall accept notice and investigate any allegations from complainants who ask to remain confidential. 50 ILCS 705/6.3 (c)(2). The individual who made the complaint may make a written request for the status of the Board's review. 50 ILCS 705/6.3 (c)(3). The Board will provide a complaint form which includes information such as name of the individual or LEA submitting the complaint, the identity of the LEO, statement of facts and evidence supporting the complaint, whether the complaint has been reported elsewhere, and an option for the complainant to consent to disclosure of their identity.⁶ 50 ILCS 705/6.3 (d).

Preliminary Review

When the Board receives a complaint, it must conduct a preliminary review of the allegations to determine if there is sufficient information to warrant an investigation. Unless it would jeopardize the investigation, within 30 days after receipt of the complaint, the Board must notify the LEA and the Professional Conduct Database (if necessary under Section 9.2). The Board will also notify the relevant State's Attorney's office if the allegations, if true, would constitute a violation of state law. 50 ILCS 705/6.3 (e)(5).

During the preliminary review, the Board will contact the LEA that employs the LEO that is the subject of the complaint and obtain any investigative materials the LEA may have regarding the subject of the investigation. The Board will create rules to govern its preliminary review process. 50 ILCS 705/6.3 (e). If, after a preliminary review of the alleged violation, the Board believes there is sufficient information to warrant further investigation, the complaint will be assigned for further investigation. If there is insufficient information to support the allegations to warrant further investigation, the Board will close its investigation and send notice of such closure to all parties who had notice of the complaint within 30 days after the decision to close the preliminary review.⁷ 50 ILCS 705/6.3 (e).

⁶ The confidentiality granted by this subsection does not preclude the disclosure of the identity of a person in any capacity other than as the source of an allegation. 50 ILCS 705/6.3 (d).

⁷ If the Board determines that notification to the LEO would jeopardize the investigation, notification need not be made. In addition, the Board may decide to wait to investigate a LEO if the subject of the complaint is also the subject of a criminal prosecution. 50 ILCS 705/6.3 (e) (5) ad (6).

A LEA that submits the notice a violation to the Board will be responsible for conducting the underlying investigation, except when:

- (i) the LEA refers the notice to another LEA or the Board for investigation and such other agency or the Board agrees to conduct the investigation;
- (ii) an external, independent, or civilian oversight agency conducts the investigation in accordance with local ordinance or other applicable law; or
- (iii) the Board has determined that it will conduct the investigation based upon the facts and circumstances of the alleged violation, including but not limited to, investigations regarding the Chief or Sheriff of a LEA, familial conflict of interests, complaints involving a substantial portion of a LEA, or complaints involving a policy of a LEA.

50 ILCS 705/6.3 (f). Whoever conducts the investigation must submit quarterly reports to the Board regarding the progress of the investigation. Within 7 days after completing an investigation, the investigating agency will submit an Investigative Summary Report and copies of any evidence to the Board. The Board will review the report for completeness and may direct the investigating agency to take any additional investigative steps deemed necessary to thoroughly and satisfactorily complete the investigation. The Board will conduct the investigation when the State's Attorney's office submits the notice of violation to the Board. 50 ILCS 705/6.3 (f) (2) and (3). Further, the Board may, at any point, initiate a concurrent investigation under this section. The Board will create rules that address the sharing of information and investigative means, such as subpoenas and interviewing witnesses when there are concurrent investigations taking place. The Investigative Summary Report prepared by the investigating agency must contain the allegations and evidence gathered as well as the identity of all persons interviewed. 50 ILCS 705/6.3 (f) (5).

Written Policy Regarding Reporting

Every LEA must establish a written policy regarding the investigation of conduct that may result in discretionary decertification under Subsection 6.3 (a). The written policy must include a requirement that every LEO employed by the LEA report conduct described in Section 6.3(b) to a supervising officer. The policy must be available for inspection under the Freedom of Information Act. Nothing in this statute prohibits a LEA from conducting an internal investigation for purposes of enforcement of the LEA's rules and regulations and for purposes of internal discipline. 50 ILCS 705/6.3(f)(6).

Filing Complaint With The Certification Review Panel

If, after review of the Investigative Summary Report, the Board believes that a LEO engaged in conduct that violates the Training Act, the Board shall file a formal complaint with the Certification Review Panel. 50 ILCS 705/6.3 (g). Once the complaint is filed, the Certification Review Panel will notify the subject LEO of the allegations. The LEO will also be notified that the LEO's certification has been temporarily suspended under Section 8.3. The LEO has a right to file an answer within 30 days after service of the notice of the complaint. If the LEO fails to answer the complaint, a default may be taken and the allegations against the LEO will be deemed admitted. If a default is taken, the LEO's certification may be revoked. Alternatively, if a LEO is not contesting the complaint, the LEO may request an informal conference to surrender his certification. 50 ILCS 705/6.3 (h).

Please note that LEO may have a default decision set aside by notifying the Certification Review Panel within 30 days after receipt of the default decision that the LEO seeks to vacate the default. If that occurs, the matter will be set for hearing before an Administrative Law Judge (ALJ). 50 ILCS 705/6.3 (h)(3).⁸ If the matter proceeds to a hearing, an ALJ will hear the allegations alleged in the complaint. The LEO may be represented by counsel and the Board and the LEO are the parties to the proceeding. Each party may present argument and evidence to the ALJ. Presumably, this hearing will be consistent with the requirements of any due process hearings. 50 ILCS 705/6.3 (h)(7). After the conclusion of the hearing, the ALJ shall issue a report of their findings of fact, conclusions of law, and recommended disposition to the Certification Review Panel. If the LEO objects to any procedural or substantive legal portion of the report, the LEO may do so by filing a written brief with the Certification Review Panel within 14 days after receipt of the report. 50 ILCS 705/6.3 (h)(7).

Upon receipt of the ALJ's recommendation, the Certification Review Panel will consider the recommendation and the underlying evidence and testimony received. The Certification Review Panel will not receive any additional evidence. The Panel may deliberate in closed session, but any vote taken regarding the Panel's recommendation to the Board must be taken in open session. The Certification Review Panel will vote by a simple majority whether the allegations in the complaint are proven by clear and convincing evidence. If the allegations are not proven, then the Certification Review Panel shall recommend to the Board that the complaint be dismissed. If the Panel finds that the allegations in the complaint are proven by clear and convincing evidence, then the Certification Review Panel shall recommend that the Board decertify the officer. The Panel will prepare a summary report as soon as practicable after the completion of the meeting. The report must include the following: the hearing officer's findings of fact, conclusions of law, recommended disposition, and the Certification Review Panel's order. 50 ILCS 705/6.3 (h)(9).

After receiving the Certification Review Panel's recommendations and any objections by the LEO, the Board, by majority vote, shall issue a final decision to either decertify the LEO or take no action in regard to the LEO. No new or additional evidence may be presented to the Board. If the Board makes a final decision contrary to the recommendations of the Certification Review Panel, the Board shall set forth in its final written decision the specific written reasons for not following the Panel's recommendations. A copy of the Board's final decision shall be served upon the LEO, the LEO's last (or existing) LEA, the complainant, and the Certification Review Panel. 50 ILCS 705/6.3 (h)(9).

Within 30 days after service of the Board's final decision, the Certification Review Panel or the LEO may file a written motion for reconsideration with the Review Committee. The motion for reconsideration shall specify the particular grounds for reconsideration. The non-moving party may respond to the motion for reconsideration. The Review Committee shall only address the issues raised by the parties in the request for reconsideration.

The Review Committee may deny the motion for reconsideration, or it may grant the motion in whole or in part and issue a new final decision in the matter. The Review Committee must notify the LEO and their last employing LEA within 14 days after a denial and state the reasons for denial. 50 ILCS 705/6.3 (h)(9).

Database Of Completed Investigations

⁸ A hearing may be suspended for up to one year, or longer upon good cause shown. 50 ILCS 705/6.3 (h)(4)

The Board will maintain a searchable database of all completed investigations of LEOs relating to decertification. This database shall identify each LEO by a confidential and anonymous number and include:

- (i) the LEO's employing agency;
- (ii) the date of the incident referenced in the complaint;
- (iii) the location of the incident;
- (iv) the race and ethnicity of each officer involved in the incident;
- (v) the age, gender, race and ethnicity of each person involved in the incident, if known;
- (vi) whether a person in the complaint, including a LEO, was injured, received emergency medical care, was hospitalized or died as a result of the incident;
- (vii) the LEA or other entity assigned to conduct an investigation of the incident;
- (viii) when the investigation was completed;
- (ix) whether the complaint was sustained; and
- (x) the type of misconduct investigated.

The Board must redact or withhold such information as necessary to prevent the disclosure of the identity of a LEO.⁹ The database containing information on completed investigations must be publicly available on the Board's website. 50 ILCS 705/9.2(e).¹⁰

At any time, a LEO shall have access to the LEO's own records on file with the Board, as it pertains to the databases in this Section 9.2.

Annual Report

The Board must submit an annual report to the Governor, Attorney General, President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives, on or before March 1, 2023, and every year thereafter, indicating:

- (i) the number of complaints received in the preceding calendar year, including but not limited to the race, gender, and type of discretionary decertification complaints received;
- (ii) the number of investigations initiated in the preceding calendar year since the date of the last report;

⁹ The privacy limitations contained 50 ILCS 705/9.2(c) may also apply to this information.

¹⁰ An investigation is complete when the investigation has either been terminated or the decertification action, including the administrative review process, has been completed, whichever is later. 50 ILCS 705/9.2(e-1)

- (iii) the number of investigations concluded in the preceding calendar year;
- (iv) the number of investigations pending as of the last date of the preceding calendar year;
- (v) the number of hearings held in the preceding calendar year; and
- (vi) the number of officers decertified in the preceding calendar year.

The annual report shall be publicly available on the Board's.

Conclusion

While we wait for ILETSB to issue its interpretation of some of these amendments, Departments are wise to review their internal policies and process to ensure they understand the interplay between the hiring and reporting process, decertification process, and the Department's internal investigation and reporting process.



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