

NATIONAL LAW ENFORCEMENT DECERTIFICATION INDEX

Provided to CALEA by the Police Foundation

Background

Decertification is the process by which a state authority determines that an individual should not be allowed to continue exercising the duties and privileges of a law enforcement officer.¹ This process occurs at the state level, and reporting officer decertification to a national database remains voluntary.² The objective of state decertification is to prevent the intrastate rehire of problem officers, primarily law enforcement, but also correctional officers, parole and probation, canine, private security officers, and dispatchers.³ Common bases for decertification are felony convictions, misdemeanor convictions, failure to meet training or qualification requirements, misconduct, and termination of employment for cause. Some agencies also report voluntary relinquishment in lieu of prosecution or revocation as a basis of revocation.⁴

In 2014, forty-four states had a process for decertification of an officer who engaged in serious misconduct, but sixteen of those states had only limited authority, meaning the officer had to be convicted of a crime in order to be decertified⁵. Hawaii, New York, Massachusetts, New Jersey, Rhode Island, and California do not have decertification authority.⁶ Some states additionally have decertification through the court system, where judges enter an order forfeiting the officer's right to hold public office if convicted of a certain offense.⁷

Prior to the creation of a national decertification index, decertification information was not made readily available to hiring agencies outside of the state, making the interstate rehire of decertified officers possible. In order to combat this problem⁸, the Office of Justice Programs, Bureau of Justice Assistance funded the development of the National Decertification Index (NDI). The International Association of Directors of Law Enforcement Standards and Training (IADLEST) developed the NDI, in the absence of a federal mandate, to serve as a national registry of certificate or license revocation of actions relating to officer misconduct.⁹ Participating state agencies provide records to the NDI, but inclusion in the database does not necessarily preclude any individual from appointment as an officer.¹⁰

CALEA Standard

32.2.1 Background Investigations

A background investigation of each candidate for all positions is conducted prior to appointment to probationary status, and includes:

- *verification of qualifying credentials;*
- *a review of any criminal record; and*
- *verification of at least three personal references.*

Commentary

It is more reliable to conduct the inquiry in person, though telephone and mail inquiries are appropriate in obtaining criminal history and driving records. The investigation should routinely involve a home visit with the candidate and his or her family and interviews with neighbors. Background investigations are generally listed among the final stages in the selection process only to suggest that this is when they should be completed; they are likely to have commenced much earlier.

26.1.8 Records

A written directive specifies procedures for maintenance of records of disciplinary actions.

Commentary

The directive should require written records of disciplinary actions and should include where the records should be filed, how long they should be maintained, and under what circumstances they should be purged.

Current Status of the National Decertification Database

As of September 2016, the NDI contains over 21,000¹¹ entries, and averages 2,816 checks per month and 800 records viewed per month. Forty states¹² enter their decertifications for misconduct into the database, and some states also enter officers under investigation, if the outcome of the investigation may lead to decertification.¹³ The ten states that do not contribute to the NDI are California, Delaware, Georgia, Hawaii, Louisiana, Massachusetts, New Jersey, New York, North Carolina, and Rhode Island. Five of these states do not have decertification authority.

The certifying agency in each state, usually the Peace Officer Standards and Training agency, or POST, is the only entity permitted to enter records, and only one state does not have a POST agency.¹⁴ The POST agency can however provide read-only access to hiring departments for purposes of pre-hiring screening, as well as approve or deny access to police departments, within the POSTS' respective state. Additionally, each POST agency independently determines the criteria for reporting an action on an officer in conjunction with local policies.¹⁵ According to IADLEST, POST agencies do not report decertifications for failure to meet annual in-service training requirements.

The NDI does not store specific data about the reasons for decertification, decertification action, or personnel records, rather it serves as a pointer system to indicate that the officer may have been decertified in a particular state and refers the querying agency to the appropriate state records custodian.^{16,17} The POST agency that decertifies holds the decertification records. The NDI's function is to simply note that the new applicant may have been subject to decertification as something that should be investigated in more detail, as sometimes events that lead to decertification in one state are not always actionable in another state.¹⁸ In some states, only conviction of a felony or misdemeanor involving moral turpitude triggers revocation, while in others, misconduct proven in an administrative hearing, or conduct involving civil rights violations and excessive force are grounds for revocation.¹⁹

The NDI is free of charge to any law enforcement officer with hiring background authority. However, many law enforcement agencies are unaware of the NDI. To date, only 1,400 agencies have requested access.

Summarizing the Research & Key Findings

At the core of the effort to create, maintain, and encourage the use of the NDI lies the need to prevent officers previously engaged in significant misconduct from continuing to serve in policing - a position of public trust. According to Puro and Goldman (1997), there is increasing evidence that officers who engage in excessive force or other unlawful actions are likely to have committed similar actions in the past.²² Puro and Goldman cite multiple instances of this phenomenon, including a Wisconsin officer who committed sodomy and was discharged by his first department, but rehired by a second department where he repeated the offense.²³ Similar incidents were anecdotally described in Florida, Arizona, and Arkansas²⁴, although officers in all four of these cases were not formally decertified for their actions, just dismissed from their original department and rehired by a new department.

Of Note...

The 21st Century Policing Task Force Report included the following recommendation regarding the National Decertification Index:

"The U.S. Department of Justice, through the Office of Community Oriented Policing Services, should partner with the International Association of Directors of Law Enforcement Standards and Training (IADLEST) to expand its National Decertification Index to serve as the National Register of Decertified Officers with the goal of covering all agencies within the United States and its territories. Expanding this system to ensure national and standardized reporting would assist in ensuring that officers who have lost their certification for misconduct are not easily hired in other jurisdictions.²⁰ A national register would effectively treat 'police professionals the way states' licensing laws treat other professionals. If anything, the need for such a system is even more important for law enforcement, as officers have the power to make arrests, perform searches, and use deadly force.²¹"

No empirical studies were identified regarding the number of officers who commit unlawful acts in a new department after being formally decertified, however, the incidents cited by Puro and Goldman are significant. The officers in these cases who committed misconduct in one department and then in a second department, had superiors or other agency members who knew of the misconduct and did not report it to the other department's hiring agency.²⁵ Even with increased decertification participation in recent years, this lack of communication between agencies, or failure to notify a hiring agency of misconduct can still occur, as not all states are required to report disqualifying conduct to their POST.²⁶ Furthermore, not all states grant qualified immunity to chiefs reporting misconduct to departments outside of the original state, or grant qualified immunity to the POST agency so that they can report misconduct to the new department.²⁷ This can discourage chiefs from reporting disqualifying conduct.

One particularly relevant and recently published study informs the national use of the NDI²⁸. Atherley and Hickman conducted an empirical study of national decertification practices in the United States, through an establishment survey of POST agencies.²⁹ The survey examined the degree of POST participation and records submitted to the NDI in 2011. Additionally, the survey covered current certification and decertification practices, including the basis for decertification, total number of decertification actions by type of officer, reason for decertification, reporting practices, and data retention.³⁰ Atherley and Hickman found that some agencies were unclear of the year in which decertification was granted, causes of decertification, and officers decertified. Law enforcement officers were most frequently decertified for felony convictions, and the state of Florida reported the most decertifying actions (6052) since decertification authority was granted. Atherley and Hickman found that POST agencies in 43 states reported maintaining decertification records indefinitely, and others reported retaining records for 10-50 years. In 2011, only thirty POST agencies reported contributing records to the NDI, and few agencies actually queried the database during pre-hiring screening.³¹ Overall, Atherley and Hickman note that the lack of revocation authority or limited revocation authority in some states can be to the detriment of the overall power of decertification at the state and national level.

When examining the national use of the NDI, it is also important to be aware of state decertification practices and challenges, as these items can influence the POST agency's use of the NDI and the quality of information in the NDI. In the Atherley and Hickman (2013) study, POST agencies reported having some difficulty determining whether an officer who has separated from an agency may have engaged in conduct that could lead to decertification. This difficulty stems from the reality that law enforcement is required to report separations to their POST agency, but not necessarily to report awareness of disqualifying conduct that could have played a role in the separation. Specifically, forty-three states require law enforcement agencies to report employment separations of any type to their POST agency, but only eighteen states require reporting awareness of conduct that could lead to decertification.³² This is complicated by the need for qualified immunity, and ultimately leaves the decertification authority to determine whether or not disqualifying conduct played a role in the separation.³³ Additionally, Atherley and Hickman found that some POST agencies had difficulty providing detail on the causes for decertification, the types of officers who were decertified, and the total number of decertification actions performed.³⁴ Because the POST agencies are the only entities permitted to upload decertification records to the NDI, the NDI is limited to the quality and quantity of information POST agencies receive from their respective states.

As the primary users of the NDI, and the only entity permitted to add, edit, and delete records, it is therefore necessary that POST agencies receive accurate and complete information on conduct that could lead to decertification.³⁵ According to Goldman (2013), POST agencies should have jurisdiction over various criminal justice occupations, the ability to revoke licenses for a broad range of police misconduct, and benefits and consequences to encourage chiefs and sheriffs to report decertifiable conduct.³⁶ Nineteen states authorize hiring agencies to use the NDI for querying purposes as part of applicant screening, a function POST agencies can perform as well. In 2011, thirty agencies reported submitting a total of 1,341 records to the NDI. In 2014, the number of reporting agencies increased to thirty-seven, and in 2016 increased to forty.³⁷ Atherley and Hickman note that there is not a direct relationship between records submitted and the number of decertification actions in a particular year, as some agencies report decertifications from previous years in an effort to "catch up".³⁸

POST agencies have increased their awareness and use of the NDI over time. In 2008, eight agencies reported that they were unaware of the NDI, knew little about the NDI, or were considering records contribution in the future. However, in 2011, only one agency indicated that they were unaware of the NDI, and four agencies indicated they would be contributing records in the future.³⁹ In 2011, twenty-two agencies reported always or frequently querying the NDI, while fourteen agencies reported occasional or rare use of the NDI. Fourteen agencies reported never querying the NDI. Twenty-nine out of the thirty agencies that contributed records in 2011, reported using the NDI for querying purposes as well. Seven POST agencies reported that they neither provided records to the NDI nor queried the NDI. Only twenty-two record-contributing states reported always or frequently querying the NDI during pre-employment background checks.⁴⁰

While there have been multiple attempts to federally mandate decertification and NDI reporting, none have come to fruition.⁴¹ In 1996, Congress failed to pass a bill that would mandate reporting to a national registry of law enforcement officers. Similarly, two subsequent DOJ initiatives to develop national repositories for certification information were unsuccessful. Atherley and Hickman noted that there has been pushback from law enforcement agencies and labor unions on mandatory decertification and NDI reporting.⁴² Goldman also includes in his proposed “model law” on decertification that penalties need to address lack of compliance by police chiefs who fail to report and investigate misconduct.⁴³ This lack of compliance stems from the idea that once the officer who engaged in misconduct resigns, the chief no longer has responsibility for that person.⁴⁴ Also, it can reflect poorly on a chief to have hired somebody who later engages in misconduct, so chiefs will not report misconduct as a result.⁴⁵ As a remedy, Goldman suggests imposing civil penalties for police departments that do not report misconduct to their POST.⁴⁶

Evidence-Based/Best Practices

While the number of states using the NDI has increased over time, full participation will take time and may remain elusive. Researchers that have studied decertification argue that full participation in the NDI will be difficult without a federal mandate for decertification and NDI reporting.

IADLEST encourages all states to participate in the NDI, by reporting decertifications to their POST agency and querying the database during the hiring process, as the index is free to law enforcement hiring personnel. It is also recommended that POST agencies input decertification records and query the NDI.

Keeping in mind that the NDI does not require that details be disclosed within the system and after receiving guidance from legal counsel within their agency or governmental unit about potential reporting and non-reporting authorities and liabilities, law enforcement agencies should address within their policies on disciplinary records whether or not a decertification action shall be reported to the POST.

Agencies with legal authority or without restrictions on reporting decertifiable actions should report any founded decertifiable actions of civilian and sworn staff to their POST agency – in accordance with POST-defined procedures - as soon as possible, once the agency’s adjudication process has been fully exhausted.

As part of the agency’s hiring and background check processes for all sworn and sensitive civilian positions (including lateral hires), agencies should make an NDI check a mandatory part of the verification of qualification process, coinciding with the criminal history check process step.

Increased participation by law enforcement and POST agencies will help to optimize the completeness and therefore usefulness of the NDI. Increased use of the NDI benefits both the community as well as the police profession by helping to keep unqualified individuals out of policing and positions of public trust.

List of References and Further Reading

1. Atherley, Loren T. and Hickman, Matthew J. (2013). Officer Decertification and the National Decertification Index. *Police Quarterly*. 16(4) 420-437.
2. See Atherley and Hickman (2013) and Goldman (2014).
3. Atherley, Loren T. and Hickman, Matthew J. (2013). Officer Decertification and the National Decertification Index. *Police Quarterly*. 16(4) 420-437.
4. Ibid.
5. Goldman, R. L. (2014). Police Officer Decertification: Promoting Police Professionalism through State Licensing and the National Decertification Index. *The Police Chief*, 81, 40–42. Retrieved from http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=3538&issue_id=112014
6. As of 2014. Goldman, R. L. (2014). Police Officer Decertification: Promoting Police Professionalism through State Licensing and the National Decertification Index. *The Police Chief*, 81, 40–42. Retrieved from http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=3538&issue_id=112014
7. Ibid.
8. Atherley, Loren T. and Hickman, Matthew J. (2013). Officer Decertification and the National Decertification Index. *Police Quarterly*. 16(4) 420-437.
9. Ibid.
10. International Association of Directors of Law Enforcement Standards and Training. (2016). *National Decertification Index*. Retrieved from <https://www.iadlest.org/Projects/NDI20.aspx>
11. See <https://www.iadlest.org/Projects/NDI20.aspx> as of 9/28/16
12. International Association of Directors of Law Enforcement Standards and Training. (2016). *National Decertification Index*. Retrieved from <https://www.iadlest.org/Projects/NDI20.aspx>
13. Correspondence with Michael Becar, IADLEST Executive Director, September 30, 2016.
14. International Association of Directors of Law Enforcement Standards and Training. (2016). *National Decertification Index*. Retrieved from https://www.iadlest.org/Portals/0/Files/NDI/FAQ/ndi_faq.html
15. Ibid.
16. Atherley, Loren T. and Hickman, Matthew J. (2013). Officer Decertification and the National Decertification Index. *Police Quarterly*. 16(4) 420-437.
17. International Association of Directors of Law Enforcement Standards and Training. (2016). *National Decertification Index*. Retrieved from https://www.iadlest.org/Portals/0/Files/NDI/FAQ/ndi_faq.html
18. Ibid.
19. See Ala. Code 36-21-45 (1997 & Supp 2000), Mo. REV. STAT. 590.080 (West, WESTLAW current throughout the end of the 2002 Reg. Sess., permitting discipline after a finding of a cause by an administrative hearing commission), and S.D. Admin R. 2:0111:01 (2002).
20. President's Task Force on 21st Century Policing. (2015). Final Report of the President's Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services. Retrieved from http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf
21. Goldman, R. L. (2014). Police Officer Decertification: Promoting Police Professionalism through State Licensing and the National Decertification Index. *The Police Chief*, 81, 40–42. Retrieved from http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=3538&issue_id=112014

22. Puro, S. & Goldman, R. (1997). Police Decertifications: Changing Patterns among the States, 1985-1995. *Policing: An international journal of police strategies & management*, 20(3), 481-496.
- 23.–25. Ibid.
26. Atherley, Loren T. and Hickman, Matthew J. (2013). Officer Decertification and the National Decertification Index. *Police Quarterly*. 16(4) 420-437.
27. Puro, S. & Goldman, R. (1997). Police Decertifications: Changing Patterns among the States, 1985-1995. *Policing: An international journal of police strategies & management*, 20(3), 481-496.
28. Although the study was conducted on decertification practices in 2011, it is the most recent academic article on the subject. Figures presented may be slightly different currently, but no other empirical study was identified after 2011. An additional empirical study on decertification was identified, but it was published in 1987 and was therefore not discussed in this paper due to lack of relevance.

Goldman, R. L. (1987). Decertification of police: an alternative to traditional remedies for police misconduct. *Hastings constitutional law quarterly*, 15(1), 45 - 80.
29. Atherley, Loren T. and Hickman, Matthew J. (2013). Officer Decertification and the National Decertification Index. *Police Quarterly*. 16(4) 420-437.
- 30.–35. Ibid.
36. Goldman, R. L. (2013). A Model Decertification Law. *St. Louis University Public Law Review*.
37. See Atherley and Hickman (2013) and Goldman (2014).
38. Atherley, Loren T. and Hickman, Matthew J. (2013). Officer Decertification and the National Decertification Index. *Police Quarterly*. 16(4) 420-437.
- 39.–40. Ibid.
41. As of 2013, according to Atherley and Hickman (2013).
42. Atherley, Loren T. and Hickman, Matthew J. (2013). Officer Decertification and the National Decertification Index. *Police Quarterly*. 16(4) 420-437.
43. Goldman, R. L. (2013). A Model Decertification Law. *St. Louis University Public Law Review*.
- 44.–46. Ibid.