



MASSACHUSETTS POLICE REFORM

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**COMMON SENSE FOR THE COMMONWEALTH
FOR THE COMMON GOOD**

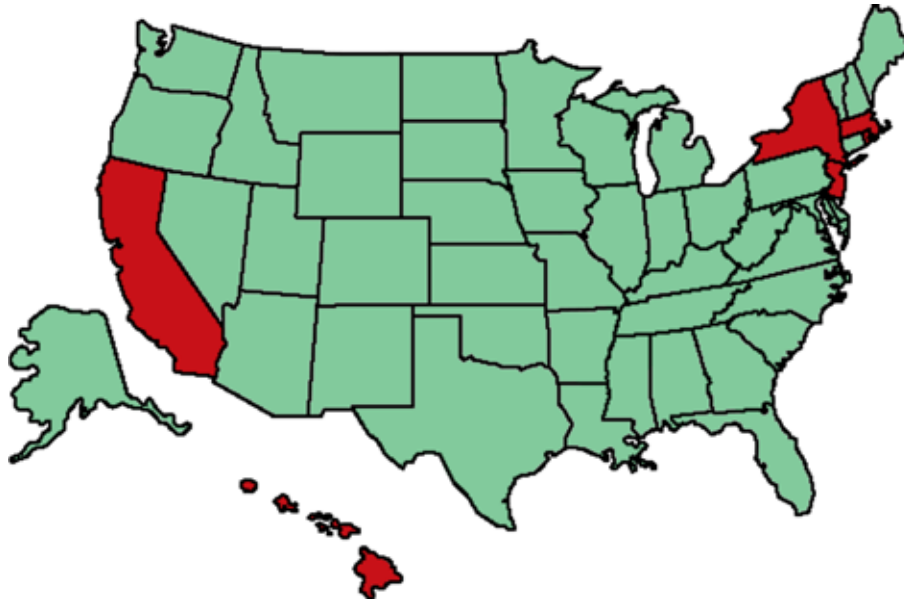
POLICE DECERTIFICATION IN MASSACHUSETTS



LEGISLATIVE INFO PACKET

POLICE DECERTIFICATION IN MASSACHUSETTS

Massachusetts is one of only six states without revocation authority. The others are California, Hawaii, New Jersey, New York, and Rhode Island.



Police decertification is a common-sense process that protects both the police and the public they serve. So often, Massachusetts is a leader and a national model in many areas, including law enforcement; however, on this fundamental issue, we lag behind 44 other states. Yet, this is one area of police reform where police, politicians, and protesters can all find agreement. As Professor Goldman wrote recently for an article in *The Police Chief*:

“Licensing and license revocation can attract support from both the law enforcement community and the civil rights and liberties community—the former is interested in professionalizing the police, the latter in protecting citizens from officers whose previous conduct renders them unfit to serve. However, leadership on resolving this issue must come from police executives since they are in the best position to make the case that unless police professionals strive to meet the highest ethical standards, they cannot expect to receive the respect and support of the communities they serve.”

Source: *“Police Officer Decertification: Promoting Police Professionalism through State Licensing and the National Decertification Index,” The Police Chief, vol. 81, no. 11, (November 2014): 40–42.*

TABLE OF CONTENTS

- I *Model Licensing and License Revocation Law*
- II *Police Officer Decertification: Promoting Police Professionalism through State Licensing and the National Decertification Index*
- III *International Association of Directors of Law Enforcement Standards and Training Letter of Support*
- IV *Police Misconduct Data*

SUPPORTING ORGANIZATIONS

Local and National Organizations Supporting Police Decertification in Massachusetts



Supporting Organizations

Mass Police Reform, American Civil Liberties Union (ACLU) of MA, Massachusetts Black & Latino Legislative Caucus, National Police Accountability Project (NPAP) of the National Lawyers Guild, New England Area Conference (NEAC) of the NAACP, Charles Hamilton Houston Institute for Race and Justice, Lawyers' Committee for Civil Rights and Economic Justice (LCCR), Restore The Fourth - Boston, Boston Police Camera Action Team (BPCAT), Unitarian Universalist Mass Action Network, Blackstonian, Organize the Hood Boston, Voices of Liberation

MODEL LICENSING AND LICENSE REVOCATION LAW



1.0 Standards of Professional Conduct

Every state should establish by law a commission with the power to certify or license law enforcement and corrections officers pursuant to professional standards set forth in the law. The commission should also have the power to revoke the license or issue lesser discipline for officers who have been found to have violated standards of conduct set forth in the statute.

1.1.1 Content

State law and commission regulations should set forth standards for initial certification, including selection, training and continuing education requirements. They should also specify the grounds for decertification and lesser discipline and provide for procedural protections including notice, hearing and appeal. The process for recertification should be set forth. The state should participate in the IADLEST National Decertification Index (NDI) of decertified officers.

1.0.2 Certification

Each commission should have the authority to certify that individuals have met the state selection and training standards required for employment as a law enforcement or corrections officer.

1.0.3 Uniformity

As is the case for other professions, the minimum state standards for certification should be uniform throughout the state.

1.0.4 Compliance

Prior to issuance of a certificate or license, the commission should ensure that the applicant has complied with minimum standards by collecting, verifying and maintaining all documentation establishing compliance, and assuring that a proper background investigation (including a truth-verification test) and criminal history check have been completed and requiring the training institution or hiring authority to provide assurance of completion of all pre-hiring requirements, subject to verification by commission audit.

1.0.5 Ongoing Compliance

The commission should be authorized to monitor and enforce ongoing compliance with minimum standards of conduct and make aware to potential hiring agencies any discipline issued by the commission.

1.0.6 Application, Certification and Denial

Each commission should require a formal application for certification. If minimum selection and training standards are met, the applicant should be certified. If the applicant does not meet minimum standards, the commission should formally notify the applicant of its intention to reject the application and allow a hearing, pursuant to applicable state law, if the applicant files a timely request for such a hearing.

1.0.7 Reporting Misconduct to the Commission

Employing agencies should notify the commission when an officer leaves employment, whether the

officer resigned, retired, was terminated or was laid off. The facts leading to the separation should be required to be disclosed where there is reason to believe the officer has engaged in decertifiable conduct. The employing agency should investigate the conduct and report its findings to the commission even in those cases where the officer has resigned. All law enforcement agencies in the state should be required to report to the commission the arrest of any person known or identified to them as a law enforcement or corrections officer.

1.0.7.1 Reporting Misconduct to Law Enforcement Agencies

On request of a law enforcement agency conducting a background investigation of an applicant for the position of a law enforcement or corrections officer, another law enforcement agency employing, previously employing or having conducted a complete or partial background investigation on the applicant should advise the requesting agency of any known misconduct.

1.0.7.2 Good Faith Reporting

State law should provide that civil liability may not be imposed on either a law enforcement agency or the commission for providing information required to be provided if there exists a good faith belief that the information is accurate.

1.0.8 Investigation of Misconduct

The commission should investigate all allegations from hiring agencies or other sources that certified officers have violated commission standards. The investigation should be completed even if the officer has resigned. If the investigation indicates that an officer is in violation of the standards, the matter should be presented to the commission or executive director as appropriate for determination. If the investigation results in a conclusion that no cause exists, the employing agency and officer should be notified. If cause is found, the commission should issue a formal complaint, specifying the conduct for which sanctions may be imposed.

1.0.9 Grounds for Discipline

Grounds for commission discipline of certified officers should be specified in state law and should include at least the following: conviction of a felony or serious misdemeanor (including a plea of guilty or nolo contendere regardless of whether there is a suspended imposition or execution of sentence; including a deferred adjudication of a felony or serious misdemeanor; the commission may also consider convictions that have been annulled); regardless of whether there is a conviction, acts of dishonesty, such as perjury and filing false reports; acts showing an intentional or reckless disregard for the rights of others; unlawful sale, use or possession of a controlled dangerous substance; and violation of the code of conduct as established by the commission. The commission shall have the authority to revoke any certificate that has been obtained through misrepresentation or fraud or that was issued as the result of an administrative error on the part of the commission or the employing agency. When permitted by statute or regulation, a certificate may be immediately suspended where the officer is under indictment for, is charged with, or has been convicted of the commission of any felony or where the officer's certificate has been suspended or revoked by another state.

1.1.0 Range of Sanctions

Depending on the type of violation, the facts and circumstances of the case, and any prior commission discipline, the commission should impose the most appropriate administrative sanction, to include suspension or revocation of the license or certificate, probation, which may include remedial retraining, or formal reprimand or censure. An officer may voluntarily surrender his license, temporarily or permanently.

1.1.1 Sanction Procedure

In accordance with the state administrative procedure act or other applicable law, the officer should be given notice of the commission proceeding, be provided with an opportunity to be heard, and be permitted to be represented by counsel at his own expense. If the hearing results in a finding that the standard of professional conduct was not violated or a conclusion that the conduct in question does not warrant administrative discipline, the case should be dismissed. In the event a violation of professional standards is found, the commission should impose sanctions as appropriate. The standard of proof for a finding that the standards have been violated is preponderance of the evidence.

1.1.2 Effect of Decisions by Employing Agencies

Action by a law enforcement agency or a decision resulting from an appeal of that action does not preclude action by the commission to deny, cancel, suspend, or revoke the certified status of an officer.

1.1.2 IADLEST National Decertification Index (NDI)

Each commission that has the power to decertify law enforcement and corrections officers should submit information that an officer has been decertified or given a lengthy suspension. In addition, each commission should query the NDI as part of the background check for initial certification. The commission should also grant permission for hiring agencies to query the NDI.

1.1.3 Dissemination

The commission should be empowered to provide to the NDI information regarding the decertification or lengthy suspension of officers for misconduct. NDI policies set forth the process for submitting information as well as querying the NDI.

1.1.4 Recertification

Each commission should develop a process whereby an officer may apply for restoration of a license that has been revoked. The policy should include the number of years an officer must wait to reapply. Prior to recertification, the officer must comply with minimum certification requirements. If recertification is denied, the officer should be given the reasons for the denial and the procedure for filing an appeal.

1.1.5 Failure to Comply

State law should provide that willful failure by the head of the law enforcement or corrections agency to comply with the provisions to report misconduct may be grounds for commission discipline or criminal prosecution.

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Cities and towns across Massachusetts have been negatively impacted by the acts of errant officers. These acts of misconduct have included corruption, drug use, theft of money & drugs, spousal abuse, drunk driving, sexual assault on adults & children, rape, physical assault, wrongful death and more. Many of these cases have resulted in guilty findings, terminations, and monetary settlements from small to large. Without Police Decertification in Massachusetts any of these officers could potentially end up practicing law enforcement in another jurisdiction whether in Massachusetts or even out of state. Police Decertification would stop recycling "bad cops" and shuffling them from place to place thusly protecting the general public as well as police departments from those not fit to serve.

POLICE OFFICER DECERTIFICATION

Promoting Police Professionalism through State Licensing and the National Decertification Index

Originally Published in *The Police Chief*



by: Roger L. Goldman, *The Callis Family Professor of Law Emeritus, Saint Louis University School of Law, Missouri*

By 2014, 44 U.S. states—almost 90 percent of the states—had a process for the removal of the license or certificate of a police officer who has engaged in serious misconduct, thereby preventing the officer from serving with any law enforcement agency in that state.¹ In most states, the agency in charge of issuing and revoking the licenses is known as the Peace Officers Standards and Training Commission (POST). In the absence of such a law, there is nothing to stop a department from hiring an obviously unfit police officer.

These laws sometimes came into existence as response to incidents or situations where license revocation might have been a beneficial tool. An especially egregious example that spurred the enactment of Missouri's revocation law in 1988 took place when a small police department, Breckenridge Terrace, located in St. Louis County, Missouri, hired Joseph Sorbello, who had previously been fired from a full-time position as a lieutenant at the Maplewood-Richmond Heights Police Department, a much larger department in St. Louis County. At the Maplewood-Richmond Heights department, Sorbello was involved in several instances of misconduct over a six-year period. While employed at Breckenridge Terrace, he returned to Maplewood and fatally shot an unarmed suspect in the back.²

As detailed in a series of articles in the St. Louis Post-Dispatch about the officer's misconduct at Maplewood, in 1974, Sorbello played Russian roulette while questioning a sixteen-year-old high school student suspected of possession of marijuana in which Sorbello aimed his gun at the student's head and pulled the trigger.³ Luckily, it was an empty chamber. During his time at Maplewood, Sorbello was also charged with severely beating a prisoner arrested for disturbing the peace for which Sorbello was suspended but then reinstated after the grand jury failed to indict him. During a civil suit involving a person who was detained at the jail, a fellow officer testified that Sorbello had beaten the detainee and placed the barrel of his gun in the detainee's mouth instructing him to suck on it. Sorbello was finally fired by Maplewood, but only after he refused to take a lie detector test requested by the department in response to the county prosecutor's allegations that Sorbello lied to the grand jury regarding a concealed weapons charge against another suspect, possibly resulting in an unjust conviction.⁴

The chief at Breckenridge Terrace hired Sorbello despite his record at Maplewood. The chief freely admitted he was aware of Sorbello's record and the allegations against him. The Post-Dispatch reported that 7 officers of the 18-member Breckenridge Terrace police force were either fired or accused of serious infractions in previous police jobs. The chief himself had been indicted on a charge that he forced a woman to engage in a sex act after arresting her, although he was later acquitted.⁵

Why would an officer known to be unfit be hired by another department? The Post-Dispatch article inadvertently supplied the answer when it noted that there were budget constraints facing the second department.⁶ At the time he applied to work at the second department, Sorbello had completed his state-mandated academy training and was in possession of the state certificate indicating he was in good standing. A chief of a financially strapped department has the choice of hiring a certified but questionable officer or hiring a brand new recruit, whose academy training may have to be paid for out of the department's budget. Thus, there is a financial incentive to ignore the prior misconduct. Furthermore, someone with Sorbello's record is not going to get a job at a department that has enough money to attract candidates with a good record, so the cash-poor department is able to hire him at a discount. Finally, the officer is immediately available for duty, while the new recruit has to spend up to six months at the police academy. Of course, there's the risk that if the questionable officer commits serious misconduct at the second department, that department can be sued for wrongful hiring, but that risk is often accepted at the second department because of the difficulty of prevailing in a civil suit in federal court brought under 42 U.S.C. § 1983.⁷

The Sorbello case shows that the problem of unfit officers cannot be addressed solely by local municipalities and police departments. Every U.S. state should enact a law that takes away the ability of unfit officers to continue in law enforcement, treating 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. Currently, six states do not have any revocation authority at all. Of the 44 states that do have such authority, 16 have limited revocation authority—the officer has to be convicted of a crime for his or her license to be revoked. Those states don't require teachers, doctors, or barbers to be convicted of a crime before they lose their licenses for bad conduct—those licenses can be removed after a hearing by an administrative law judge, with the right of the licensee to appeal that decision to a court.⁸

According to the Post-Dispatch, the chief at the second department hired Sorbello, knowing what he had done at the first department, and defended the decision with the comment, "He 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."⁹ Without revocation laws and processes, officials from the city that terminated the officer in the first place can wash their hands of any responsibility for what happens at the second department. In a case from Webster Groves, Missouri, four officers resigned or were fired after allegations of improper sexual conduct with teenage girls. When it was pointed out that they might be hired by other departments, the mayor responded, "Those communities make their own choices. They are no longer with the Webster Groves Department."¹⁰ In fact, two of the officers were hired by neighboring departments, but by this time, Missouri had enacted a law that permitted revocation even in the absence of a criminal conviction and the state POST, after hearings, removed the licenses of the officers who had sex on duty at Webster Groves so that they could no longer work at the other departments.

Perhaps more common than the two cases previously discussed is the situation where the new department does not know about the misconduct at the prior department. The chief at the first department agreed not to give a bad reference if the officer resigns. In one case, an officer in Chattanooga, Tennessee, accused of brutality and drug use promised the police commissioner he would not apply to work in states near Chattanooga, but would apply for jobs two states away (in this case, Florida) if the commissioner agreed not to give any unfavorable information. When called by the West Palm Beach, Florida, department that was considering hiring the officer, the commissioner didn't mention the circumstances of the resignation, so the officer was hired, joining another officer who had recently left the Riviera Beach, Florida, Police Department after he beat a suspect and blinded him in one eye. Even though Riviera Beach had settled a lawsuit for \$80,000, the department told West Palm Beach it was unaware of any derogatory information. At West Palm Beach, the two officers in question were suspects in the killing of a hitchhiker, tried for first-degree murder, and acquitted. The West Palm Beach mayor later stated they would never have been hired had the city been told about their backgrounds.¹¹

The West Palm Beach case points out the need for a U.S.-wide databank to track problem officers who move from one state to another, similar to the congressionally mandated National Practitioner Databank for health care practitioners. Approximately 30,000 law enforcement officers have had their certificates or licenses revoked since 1960, when New Mexico was the first state to legislatively enact revocation authority. The International Association of Chiefs of Police (IACP) supported a proposed Congressional bill, the Law Enforcement and Correctional Officers Employment Registration Act of 1996.¹² The bill would have, among other things, required all revocations to be entered on the databank, but it never made it out of the U.S. House of Representatives subcommittee. In the absence of a U.S. government-regulated databank, there is a databank known as the National Decertification Index (NDI) administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST). Thirty-seven states currently submit decertification data to the NDI, and all POST executive directors, as well as law enforcement agency personnel given permission by the executive directors, are entitled to query the NDI. As of mid-August 2014, there were approximately 18,000 decertified officers listed in the NDI.

Decertification is merely one aspect of treating policing as a profession, regulated at the state level as are myriad other occupations and professions.¹³ Of the 44 U.S. states that decertify police officers, all have other components of a state-licensing scheme, including mandated adherence to specified selection standards. Selection standards include minimum educational requirements, psychological testing, and background checks, most often done by the hiring agency with state audits to ensure the checks have been carried out. States typically mandate a training curriculum, approve training academies or do the training themselves, and set the minimum hours of mandated training required. Some states not only require the recruit to successfully graduate from the academy, but also to take a state licensing exam, much like a lawyer who has to graduate from law school and then pass the bar exam. Most states also have continuing education requirements, with defined consequences for failure to comply. Some of the states that don't have revocation authority do set state standards for training, both at the basic and in-service level. Some states also, in effect, have decertification, not by an administrative agency but by courts: when the officer is convicted of certain specified offenses, the judge must enter an order forfeiting the officer's right ever to hold public office of any type in the future.

For those states that have no revocation authority or those with very weak revocation laws, there is reason to be optimistic that legislative progress can be made. Licensing and license revocation can attract support from both the law enforcement community and the civil rights and liberties community—the former is interested in professionalizing the police, the latter in protecting citizens from officers whose previous conduct renders them unfit to serve. However, leadership on resolving this issue must come from police executives since they are in the best position to make the case that unless police professionals strive to meet the highest ethical standards, they cannot expect to receive the respect and support of the communities they serve.

Roger L. Goldman, the Callis Family Professor of Law Emeritus at Saint Louis University School of Law, is an expert on U.S. police licensing and license revocation laws. For more than 25 years, he has been helping states write and adopt laws that provide for removing the license or certificate of an officer who engages in serious misconduct, such as sexual assault or brutality.

Professor Goldman is also a leading expert on the U.S. Supreme Court and constitutional law. In addition to his many articles on police licensing, he is an author of three books on the U.S. Supreme Court: *The Role of the Supreme Court in Protecting Civil Rights and Liberties*; *Justice William J. Brennan, Jr.: Freedom First*; and *Thurgood Marshall: Justice for All*.

Notes:

1 - The six states without revocation authority are California, Hawaii, Massachusetts, New Jersey, New York, and Rhode Island; Roger L. Goldman, "State Revocation of Law Enforcement Officers' Licenses and Federal Criminal Prosecution: An Opportunity for Cooperative Federalism," *Saint Louis University Public Law Review* 22 (2003): 121–150, <http://ssrn.com/author=25074> (accessed September 30, 2014).

2-6 - William Freivogel, William F. Vogler, and Paul Wagman, Series of articles from January 9, 1977, to April 1, 1980, *St. Louis Post-Dispatch*.

7 - In *Board of County Commissioners of Bryan County v. Brown*, 520 U.S. 397 (1997), the U.S. Supreme Court addressed the question of whether a local governmental entity is subject to § 1983 liability for a deputy's use of excessive force and related constitutional violations based on the single decision of the sheriff to hire a deputy with a lengthy criminal record without an adequate background check. In rejecting the availability of entity liability for a single hiring decision, the court emphasized that for a municipality to be held liable, a plaintiff must identify the deliberate conduct of the municipality that made it the "moving force" behind the constitutional violation. As for the U.S. state law claims, this is state-specific based on state tort law and state policies concerning municipal immunity.

8 - Roger L. Goldman, "A Model Decertification Law," *Saint Louis University Public Law Review* 32, no. 1 (2012): 150, fn 9, <http://ssrn.com/author=25074> (accessed October 2, 2014).

9 - William Freivogel, William F. Vogler, and Paul Wagman, Series of articles from January 9, 1977, to April 1, 1980, *St. Louis Post-Dispatch*.

10 - Elizabeth Vega, "When Officers Quit Under Suspicion, State Wants to Know Details," *St. Louis Post-Dispatch*, January 14, 2001, C1.

11 - See Roger L. Goldman and Steven Puro, "Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?" *Saint Louis University Law Journal* 45 (2001): 541, 561–562, <http://ssrn.com/author=25074> (accessed October 2, 2014).

12 - Law Enforcement and Correctional Officers Employment Registration Act 1996, H.R. 3263, 104th Cong. (1996); Law Enforcement and Correctional Officers Employment Registration Act of 1995, S. 484, 104th Cong. (1995).

13 - See Thomas J. Jurkanin, "Police Licensing and Revocation," *The Police Chief* 81, no. 2 (February 2014): 30–35. Please cite as:

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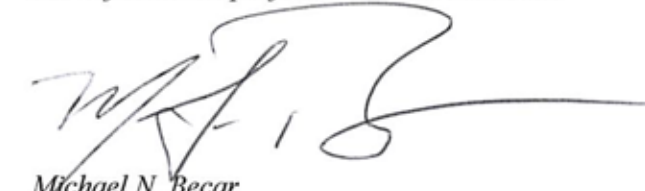
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In the 1950's the states began treating law enforcement as a profession. One of the hallmarks of a profession is that professionals must live up to certain standards or lose the privilege of practicing the profession. Professionalization of the delivery of police services requires continual monitoring to ensure practice meets the prescribed standards. When it falls below that standard or is unethical, there should be a mechanism for removing unfit officers. The need for professionalization of law enforcement has led to the establishment of state agencies usually called Police Officer Standards and Training Boards (POSTs). In every state except Hawaii, POSTs have the authority to set standards relating to hiring and training of peace officers. Unless the individual complies with those standards, he is not able to serve as a peace officer in the state. In 44 states, POSTs have the additional authority to certify or license all law enforcement officers when they meet the standards, and in cases of misconduct, they can revoke the officer's certificate, a process typically called "decertification." Massachusetts is one of six states that does not have the authority to decertify officers for misconduct.

Decertification is similar to the removal of a license common to most other professions and occupations. A peace officer who has been found after a hearing to have violated the state's statutes or regulations, will have his certificate revoked, thereby preventing the officer from getting hired by another police or sheriff's department within the state. In many states, an officer need not first be terminated from a local department; he can still be decertified even if he resigns prior to any action from the department. In terms of what kind of conduct can lead to decertification, there are two major approaches: (1) states that permit revocation on narrowly defined grounds such as a felony conviction or a misdemeanor conviction involving moral turpitude, and (2) states that permit revocation for conduct that has not resulted in a conviction.

When officers are decertified, it helps end the practice of problem officers who outrun discipline efforts by resigning positions in one jurisdiction to take up work in a neighboring jurisdiction in the same state, or another state. Approximately 30,000 law enforcement officers have had their licenses revoked since 1960 when New Mexico became the first state to decertify.

Policing requires public trust, and as long as Massachusetts does not have the authority to decertify unethical law enforcement officers, that public trust will erode and the law enforcement profession will be tarnished.



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POLICE MISCONDUCT DATA

The Cato Institute's National Police Misconduct Reporting Project (NPMRP)

**CATO
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The NPMRP is a non-governmental, non-partisan independent project that identifies trends affecting police misconduct, and reports on issues about police misconduct in order to enhance public awareness on issues regarding police misconduct in the U.S.

* Data from the NPMRP 2009-2010 report revealed 170 reported incidents covering over 64 cities & towns in Massachusetts from Adams to Yarmouth. In a sampling of February 2016 alone the NPMRP's daily newsfeed recorded seven incidents in Massachusetts. The incidents reported range from drug offenses, brutality, perjury, domestic violence, drunk driving, false arrest, wrongful arrest, excessive force, theft, sex offenses and racist comments.



The International Association of Directors of Law Enforcement Standards and Training (IADLEST) National Decertification Index (NDI)

The International Association of Directors of Law Enforcement Standards and Training (IADLEST) is an international organization of training managers and executives dedicated to the improvement of public safety personnel. IADLEST serves as the national forum of Peace Officer Standards and Training (POST) agencies, boards, and commissions as well as statewide training academies throughout the United States.



The National Decertification Index (NDI) maintained by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) currently contains 20,553 actions reported by 39 states. 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. The records contained in the NDI are provided by participating state government agencies and should be verified with the contributing authority.