

Police Officer Decertification: Promoting Police Professionalism through State Licensing and the National Decertification Index

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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. ♦

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Notes:

¹The 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).

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

³In *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.

⁸Roger 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).

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

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

¹¹See 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).

¹²Law 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).

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

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