

**AN ACT REGULATING LAW ENFORCEMENT OFFICER SCREENING,
DISCIPLINE, AND DECERTIFICATION**

Below is a preliminary draft of our comprehensive officer screening, discipline, and decertification statute. We welcome any feedback. As we update the statute, we will post updated versions on the Policing Project website.

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SECTION I: DEFINITIONS

For purposes of this statute

- (1) “Board” or “POST board” means [insert official name of state agency, e.g. “Peace Officer Standards and Training Board”].
- (2) “Officer” means an agent, operative, or official of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer of a law enforcement agency or other governmental entity, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime. Officer shall also include certified private police.
- (3) “Law enforcement agency” or “agency” means any police department, sheriff’s department, transit agency police department, school district police department, the police department of any campus of [list public college systems], and [list state law enforcement agencies, such as the state highway patrol].
- (4) “Employing agency” means the law enforcement agency employing or appointing the police officer.
- (5) “Conviction” shall include a finding or a verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon.
- (6) “Serious bodily injury” means bodily injury that results in a permanent disfigurement, extreme physical pain, loss or impairment of a bodily function, limb or organ, or a significant risk of death. Examples of serious bodily injury include: broken bones, closed head injuries, loss of consciousness, as well as any other injuries that could result in death or disfigurement.

SECTION II: BOARD COMPOSITION & APPOINTMENT PROCESS

This section provides guidance for States to consider relating to POST board composition and appointment processes when drafting or reforming their decertification statutes.

(1) Board Size

State POST boards generally consist of 10-20 board members. States should ensure the Board is large enough to attain the board member diversity recommendations proposed in subsection (2) below.

The [State] Peace Officer Standards and Training Board is established. The Board shall consist of [#] members.

(2) Appointment

Most state boards have a combination of ex officio members and members appointed by elected officials such as the governor and the state attorney general.¹ Ex officio members obtain their board membership on account of their service in an official position (e.g., the chief of state police) rather than by appointment.

We recommend having a mix of ex officio members and members appointed by different elected officials (with potential confirmation by a state legislative body) to foster board member diversity. We also recommend having a mix of board members with and without experience as a law enforcement officer, with approximately 1/3 to 1/2 of board slots reserved for members without law enforcement experience to ensure viewpoint diversity and a board that is representative of the communities being policed.

To ensure that different communities and constituencies have adequate representation on the POST board, we recommend that States require that for some of the board member positions appointed by an elected official, the official must appoint a candidate from a list of candidates submitted by an organization representing the relevant community or constituency.²

To the extent a State's existing POST board does not reflect these recommendations, we recommend either changing the POST board composition or establishing a separate panel that manages suspension and decertification proceedings with a different composition than the POST board.³

- (a) The governor shall appoint:
 - [See charts below for member options]

- (b) *Optional*: The attorney general shall appoint:
 - [See charts below for member options]

¹ See, e.g. Fla. Stat. Ann. § 943.11(1)(a); Ga. Code Ann. § 35-8-3; Ga. Comp. R. & Regs. 464-1-.02; Or. St. § 181A.360.

² For example, Massachusetts requires the governor (or attorney general) to appoint particular members from a list submitted by a third party, such as an attorney from a list submitted by the civil rights section of the Massachusetts bar association or a social worker from a list submitted by a social workers' association. See 2019 Mass. S.B. 2963 § 2(a).

³ For example, Illinois employs an 11-member decertification panel which has the power to subpoena testimony and documents (while the POST board alone has the power to suspend or revoke an officer's certification). See, e.g., 5 Ill. Comp. Stat. § 705/3.1.

(c) The following members shall serve by virtue of their service in the following offices:

- [list ex officio positions]

(d) None of the Board members outlined in §§ [insert subsections covering non-law-enforcement board members] shall be employed, or have been previously employed, as an officer.

(e) *Optional:* Appointments of members of the board by the governor are subject to confirmation by a majority of the senate in the manner provided in [cite statute governing other senate-confirmed executive appointments].

The chart below provides a host of options for non-law-enforcement board members inspired by other state laws:

Non-Law-Enforcement Board Member Options	
Ex officio	<ul style="list-style-type: none"> ● Public defenders
Appointed	<ul style="list-style-type: none"> ● <u>Community members with subject matter expertise</u> <ul style="list-style-type: none"> ○ Civil rights attorneys (selected from list of [x] candidates submitted by [civil rights section of state bar association]) ○ Social workers (selected from list of [x] candidates submitted by [State social workers’ association]) ○ Other community representatives (selected from list of [x] candidates submitted by [relevant organization with subject-matter expertise]) ○ Persons with civil oversight or auditing experience over law enforcement agencies ● <u>Judges</u> <ul style="list-style-type: none"> ○ Retired trial court judges ○ Retired appellate court judges ● <u>Members of the public</u> <ul style="list-style-type: none"> ○ Members of the public from communities with high levels of interaction with law enforcement or who are from historically underrepresented communities ○ Tribal members ● <u>Others</u> <ul style="list-style-type: none"> ○ Representative from the victims’ advocacy community ○ Elected officials from local government (e.g., mayor, city manager)

We also recommend that States provide for diverse appointments within the law enforcement field. In particular, we recommend that States include amongst its members retired police chiefs, law enforcement training directors, and others who have both subject matter expertise and a degree

of independence from the current law enforcement apparatus. The below chart depicts some potential POST board member composition options for law enforcement personnel:

Law Enforcement Board Member Options ⁴	
Ex officio	<ul style="list-style-type: none"> • Training center directors • Attorney General’s designee • Governor’s designee • Chief of state patrol
Appointed	<ul style="list-style-type: none"> • <u>Leadership</u> <ul style="list-style-type: none"> ○ Police chiefs (retired or current) ○ State or county sheriff’s or sheriff’s association members (retired or current) ○ Director of State Bureau of Investigation (or his or her designee) • <u>Officers</u> <ul style="list-style-type: none"> ○ Officers at or below rank of [<i>sergeant/first line supervisor</i>] ○ Officers with at least [<i>10 years</i>] of experience ○ Minority officers or members of a minority law enforcement association ○ Municipal officers • <u>State’s attorneys or prosecutors</u>

(3) Term Length and Renewal

- (a) All members appointed to the Board by the governor or attorney shall serve for terms of [3-5] years. But, for members first appointed as a result of [this Act], the governor or attorney general shall appoint members for terms ranging from [2 to 5] years in order to stagger future appointments.
- (b) All members serving by virtue of their service in an office under § [*subsection covering ex-officio members*] shall serve on the Board as long as they hold their office position.
- (c) *Optional:* Members serving under section (3)(a) shall be eligible for re-appointment to the POST board for one additional [x-year] term.

In setting term lengths, States should consider how long ex officio members typically serve on the Board. On the one hand, States may consider longer terms and permitting re-appointment if ex

⁴ To the extent the Board decertifies other personnel (e.g. corrections officials), States may want to include board members with expertise relevant to those personnel (e.g. the Director of the Department of Corrections or her designee).

officio members are likely to serve long terms (e.g., if the Chief of Police is an ex officio member and has been Chief for 15 years, the Chief would have a long tenure on the board). If appointed members serve longer terms, they can generate the same expertise and credibility ex officio members might have accrued because of their long tenure on the board. On the other hand, ex officio positions might be prone to high turnover, resulting in shorter terms, raising the inverse concern: that appointed members would serve longer terms, and therefore generate more expertise and credibility than ex officio members.

(4) Removal and Recusal

- (a) When a Board member may have an actual, perceived, or potential conflict of interest or appearance of bias that could prevent the Board member from making a fair and impartial decision in a suspension or decertification proceeding, the Board member shall recuse himself or herself; or if the Board member fails to recuse himself or herself, then the Board may, by a simple majority, vote to recuse the Board member from the proceeding.
- (b) A “conflict of interest or appearance of bias” in subsection (4)(a) may include, but is not limited to, matters where a party in a disciplinary proceeding is: an individual with whom the member has an employment relationship; the member’s relatives or friends, or an individual belonging to a professional organization, association, or a union in which the member now actively serves.
- (c) The governor [*or whomever appoints the Board member in question*] may remove a Board member if the member (i) is guilty of malfeasance in office or commits gross misconduct; (ii) substantially neglects the duties of a Board member; (iii) is unable to discharge the powers and duties of the Board; (iv) is convicted of a felony or [v] engaged in any conduct that could be a basis for Board discipline under Section [*grounds for discipline section*] if a law enforcement officer had engaged in the same conduct.

(5) Board Members Prohibited from Holding or Running for Certain Political Offices

During the term of their tenure, Board members may not hold or seek office in any state or local legislature, or serve as the chief executive of any state or local government.

SECTION III: BOARD POWERS

As with the Adjudicative Process section (supra ___), we recommend that States afford the Board powers that are equivalent to those of similarly constituted agencies that superintend the

practice of regulated professions. Below we offer a list of powers related to officer discipline that a State should vest its POST board with.⁵

The Board is vested with the following powers:

- (1) To meet at such times and places as it may deem necessary;
- (2) To hire staff persons to assist the Board in carrying out its duties and functions;
- (3) To contract with other agencies, public or private, or persons as it deems necessary for the rendering and affording of such services, facilities, studies, and reports as will best assist it to carry out its duties and responsibilities;
- (4) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this Act;
- (5) To refuse to grant a certificate to or to discipline a certified officer under this Act or any antecedent law;
- (6) To compel the attendance of witnesses and the production of any book, writing, or document by issuing a subpoena therefor; and
- (7) To do any and all things necessary or convenient to enable it to perform wholly and adequately its duties and to exercise the power granted to it.

SECTION IV: REGULATED PROFESSIONS

When an officer's certification is suspended or revoked in any profession certified by Board, his or her certification in any other profession certified by the Board shall simultaneously be suspended or revoked.

Most states certify criminal justice occupations apart from police officers (e.g., correctional officers, parole and probation officers, court security officers, school resource officers). We recommend that states creating new POST boards at least certify all sworn law enforcement personnel, correctional officers, and parole and probation officers to ensure that suspended or decertified police officers do not simply move to adjacent professions where they are entrusted with comparable responsibilities.

SECTION V: BACKGROUND CHECKS AND OTHER AGENCY INVESTIGATORY OBLIGATIONS

⁵ For a more complete list of potential Board powers, see Ga. Code Ann. § 35-8-7.

(1) Background Check

- (a) For purposes of this section, the term “employment-related information” means written information contained in an employer's records or personnel files that relates to an applicant’s performance or behavior while employed by such employer, including all performance evaluations, complaints (regardless if deemed unfounded or unsubstantiated), disciplinary records and records concerning investigations of misconduct (regardless of the result of the investigation), and records concerning eligibility for rehire. “Employment-related information” shall not include information prohibited from disclosure by federal law.

Any applicant who has been offered a conditional offer of employment as an officer must submit to a background investigation by the agency looking to employ the applicant (the “employing agency”) to determine the applicant’s suitability for employment and good character. Employing agencies may only make an offer of employment that is conditional on the completion of a background investigation of the applicant.

- (i) Employing agencies shall not make a nonconditional offer of employment to an applicant who has satisfied any of the grounds for discipline specified in Section [*section setting forth grounds for mandatory revocation of certification*] of this Act, or upon finding that the applicant lacks good character.
- (ii) Employing agencies, however, may make a nonconditional offer of employment to an applicant who has satisfied [*section providing for mandatory decertification for all felony convictions or crimes which are punishable by more than one year in prison*] if (1) at least [5-7] years have passed since the applicant engaged in the conduct that formed the basis for the conviction; (2) the applicant engaged in said conduct before the applicant was certified as a law enforcement officer; and the agency chief (or his or designee) have (3) considered and evaluated the circumstances of the officer’s conduct in light of the factors specified in Section [*section setting forth factors Board must consider when deciding the appropriate form of discipline to impose*]; and (4) found the applicant to have a good moral character.

[Note: This subsection reflects the view that decertifiable conduct should not necessarily bar an applicant from being certified or hired if the conduct was committed before becoming a law enforcement officer. For one, the crime may have been committed when the applicant was a young adult, and the applicant may therefore be able to demonstrate that he has been rehabilitated. Also, a contrary approach would make it especially difficult for agencies to hire officers from heavily-policed communities, where residents are more likely to be arrested, and if prosecuted, charged with more serious crimes than similarly-situated residents in communities that are not heavily policed.]

- (iii) Employing agencies shall disclose to the Board any information it uncovers that could provide grounds for discipline from the Board under section [*grounds for discipline section*] of this Act.
- (iv) The Board may inspect and copy the documentation of an employing agency to ensure compliance with this section.
- (v) The agency chief (or his or her designee) shall verify in writing to the Board under penalty of perjury that they have complied with all background check requirements and:
 - 1. have found the applicant not to have satisfied any of the grounds for discipline specified in Section [*section setting forth grounds for mandatory revocation*] except for [*section providing for mandatory decertification for all felony convictions or crimes which are punishable by more than one year in prison*] if and only if at least [5-7] years have passed since the applicant engaged in the conduct that formed the basis for the criminal conviction and the conduct occurred before the applicant was certified as a law enforcement officer; and
 - 2. if they have found an applicant (a) to have satisfied any of the grounds for discipline specified in Section [*section setting forth grounds for permissive discipline*] or (b) to have satisfied [*section providing for mandatory decertification for all felony convictions or crimes which are punishable by more than one year in prison*], and that at least [5-7] years have passed since the applicant engaged in the conduct that formed the basis for the conviction and the conduct occurred before the applicant was certified as a law enforcement officer, the agency chief (or his or her designee) have considered and evaluated the circumstances of the officer's conduct in light of the factors specified in Section [*section setting forth factors Board must consider when deciding the appropriate form of discipline to impose*], and
 - 3. have found the applicant to have good moral character, before making any nonconditional offer of employment.
- (b) The Board shall adopt rules that establish procedures for conducting background investigations. The rules must specify a form for employing agencies to use to document the findings of the background investigation.
- (c) The background check must include, at a minimum:
 - (i) a criminal history check;

- (ii) review of the National Decertification Index (and/or other similar national or regional indices specified by the Board),
- (iii) review of Board decertification, disciplinary, and any other records the Board possesses concerning the applicant;
- (iv) review of disciplinary records held by any other state or local agency or entity;
- (v) review of all employment-related information from each of the applicant's previous and current law enforcement or correctional agency employers;
- (vi) communication with the local prosecuting authority in any jurisdiction in which an officer has served to determine whether the officer is on any potential impeachment disclosure list;
- (vii) fingerprinting the applicant for the purpose of conducting a fingerprint-based search of [state FBI], the Federal Bureau of Investigation, and other relevant databases to determine the existence of any warrants, arrests, or criminal records;
- (viii) written communication with each of the applicant's references, including a written reference from each law enforcement, correctional, and private safety agency that has employed the applicant.

Each agency providing a reference must include in their reference whether the agency is aware of any conduct committed by the applicant that could satisfy any of the grounds for discipline specified in Section [*grounds for discipline section*], including any conduct the agency was investigating—even if the agency did not complete its investigation because the applicant resigned from his or her position at the agency while the investigation was pending; and

- (ix) verification of the applicant's education and military history.
- (x) *Optional*: an in-person or live-video psychological interview and evaluation by a [psychiatrist/psychologist] licensed in the state of [insert state];

Note: We welcome input on this psychological evaluation requirement, including whether this statute should make it a mandatory component of the background check or also require a written component. The literature on the efficacy of pre-hire psychological evaluations on predicting officer misconduct is mixed.

- (d) The applicant must provide the employing agency with at least the following information:
- (i) a complete list of all law enforcement, correctional, and private safety agencies that have employed the applicant as well as a reference from each agency;
 - (ii) information setting forth the facts and reasons for any of the applicant's previous separations from private or public employment or appointment, as the applicant understands them. For the purposes of this subsection, the term “separation from employment or appointment” includes any firing, termination, resignation, retirement, or voluntary or involuntary extended leave of absence from any salaried or non-salaried position;
 - (iii) a signed declaration verifying under penalty of perjury that all of the information the applicant has provided during background investigation is true and correct to the best of the applicant’s knowledge; and
 - (iv) a signed release allowing background investigation information to be shared with other law enforcement or correctional agencies, or private safety agencies that the applicant may become affiliated with.
- (e) For each applicant, the employing agency must ask each of the applicant’s current and previous employers in writing to disclose all employment-related information to the employing agency, and each employer must disclose all employment-related information upon receiving a written request from the employing agency.
- (i) Each employer shall also disclose the reason for the applicant’s separation from the employer.
 - (ii) Any person or entity who discloses information to the Board in good-faith pursuant to this Section is immune from civil liability arising from the disclosure.
 - (iii) *Optional*: If an employer refuses to disclose employment-related information to any employing agency in accord with this subsection, the employing agency, applicant, or the Board may bring a civil action for injunctive relief requiring disclosure by the employer. In any action brought under this subsection, a prevailing plaintiff shall be entitled to reasonable attorney’s fees and costs.

(2) **Post-Hire**

- (a) *Optional*: All applicants hired by an agency for the first time shall serve a probationary period for 12 months from the date of appointment and during that period may be discharged at the will of the agency chief. The agency chief may extend the

probationary period of an officer up to an additional 6 months whenever the agency chief deems it to be in the best interests of the agency.

- (b) The employing agency shall annually run a criminal history, arrest, and warrant check for each officer it employs.
- (c) Employing agencies must have a policy requiring officers to immediately report to their employing agency any pending criminal charges against them, and any conviction, plea, or other case disposition.

(3) Enforcement

- (a) In order for a law enforcement agency to be eligible to receive any state law enforcement funding or any state-administered federal grant, the chief law enforcement officer of that agency must certify annually in writing to the Board that the agency complied with all of the requirements set forth in this section in the previous calendar year. If the chief law enforcement officer submits a written certification while knowing that the agency has not complied with all of the requirements set forth under this section, he or she shall be fined no more than [*one-quarter or one-half*] of his or her annual salary.
- (b) The Board also may impose a civil penalty on employing agencies not to exceed [\$5,000-\$25,000] per violation for the failure of an employing agency to follow the requirements of this section.

NOTE: We have also considered whether imposing civil liability on agencies when an officer, for example, uses excessive force and the agency should have, but did not, uncover prior uses of excessive force by that officer during the background check. We welcome any feedback on the wisdom of adding a civil liability provision and if so, how it should be structured. It is difficult to determine what exactly liability should attach to and what exactly the nexus between the misconduct and the agency's inadequate background check should be (e.g., liability any time an officer violates of 42 U.S.C. § 1983 or the state statutory equivalent and the agency hasn't satisfied the requirements of this section? Should we require a tighter nexus between the officer's present misconduct/excessive force and what the agency failed to discover during the background check?).

SECTION VI: GROUNDS FOR DISCIPLINE

*Our approach in this section reflects what Roger Goldman has termed the “hybrid” approach to defining categories of misconduct. Roger L. Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?*, 45 St. Louis U. L.J. 541, 554 (2001). That is, defining forms of misconduct broadly and at a high level of generality, while also providing a non-exhaustive list of specific examples or categories of misconduct. This has the benefit of providing guidance to officers and the public, while also granting the POST the*

flexibility to address forms of misconduct that may not have been contemplated at the time the statute was enacted. It also alleviates drafters from the tedious burden of creating a discrete form of misconduct for every conceivable contingency.

Following the lead of many state decertification laws, we divided categories of misconduct into two buckets: misconduct for which discipline is mandatory (subsection (1)) and misconduct for which discipline is permissive (subsection (2)). We reasoned that some forms of misconduct are so severe (e.g. felony convictions) that they will require discipline in every case, while deciding on what (if any) discipline is appropriate for other forms of misconduct will depend on the particular facts and circumstances of the case.

While some States mandate that an officer be decertified whenever he is either fired by his employing agency, we opted not to include such a provision in our law. Imposing automatic revocation for being fired seemed unwise given that there are many reasons why an officer might be fired that would not be subject to discipline by the POST (e.g. persistent tardiness). It also may not produce the intended outcome, as agencies may be reticent to fire otherwise unfit officers if doing so will inexorably lead to the harsh consequence of decertification.

Relatedly, some States require decertification whenever an officer is decertified in another State. While stopping bad cops from getting rehired out-of-state is certainly an important goal, requiring in-state decertification whenever an officer has her license yanked out-of-state is problematic for two reasons. First, such a provision will likely raise a serious separation of powers question under the state constitution because it delegates executive authority to a democratically-remote, out-of-state agency. Second, it risks revoking the certificate of an officer (or barring a person from being certified in the first instance) because his certificate was revoked in another State for conduct that would not require revocation in the home State.

Finally, we declined to set out a separate category of misconduct for failure to continue to meet the requirements for certification. Instead, we included a separate section on recertification, which states that certificates expire three years after issuance, and requires officers to furnish the Board with proof that they are in compliance with all relevant training, continuing education, and other requirements for good standing. We felt this process would be more streamlined, as it puts the burden on the officer to demonstrate compliance at a specific time and allows the Board to issue forms or guidelines that should make verification of good standing relatively easy to administer. Conversely, creating a separate ground for decertification would require continuous supervision and perhaps individualized investigations by the Board and/or agencies.

- (1) The Board shall revoke an officer's certificate upon finding that:
 - (a) The officer has been convicted of any offense designated under the law of the jurisdiction where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed.

- (b) The officer has been convicted of a crime under the following statutes prohibiting deprivation of rights: 18 U.S.C. §§ 241, 242, 245, 249; 42 U.S.C. §§ 3631, 14141; [*insert relevant state laws*].
 - (c) The officer has been convicted in this State of any offense involving domestic violence, as defined in [*insert citation to state law*]; or the officer has been convicted in any State of 18 U.S.C. § 2261(a). or is prohibited from possessing a firearm or ammunition under 18 U.S.C. § 922(g)(9).
 - (d) The officer committed, or attempted to commit, any of the following acts, regardless of whether the officer was criminally prosecuted:
 - (i) Intentionally obtained a confession that the officer knew or should reasonably have known to be false, whether or not used in court;
 - (ii) Intentionally created or used falsified evidence (including false testimony) that the officer knew or reasonably should have known to be false, or intentionally tampered with or destroyed evidence or potential evidence with the purpose of creating a false impression, whether or not the evidence was used in court;
 - (iii) Committed perjury as defined under [*insert cross reference to state or federal law*]
 - (iv) Knowingly filed a written police report containing a material false statement;
 - (v) Tampered with a witness, victim, or an informant as defined in 18 U.S.C. § 1512.
 - (e) The officer used excessive force, as defined in [*insert cite to state law*], resulting in death.
 - (f) The officer's certificate was issued as a result of an administrative or clerical error that the Board determines cannot be cured within 90 days.
 - (g) The officer's certificate was issued as a result of misrepresentation, fraud, or because a governmental entity or person with a duty to report failed to disclose information that would have disqualified the officer from being certified
- (2) The Board may revoke or suspend an officer's certificate, publicly or privately reprimand an officer, and/or order an officer to undergo retraining upon a finding that an officer has:
- (a) Been convicted of a crime in this State or any other jurisdiction.

(b) Violated [insert cite to state racial profiling law].

[Note: We included this as a ground for permissive (rather than mandatory) discipline in light of the breadth of conduct that can trigger racial profiling laws.]

(c) Violated or attempted to violate a law, rule, or regulation of this State, any other State, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, so long as such law, rule, or regulation relates to or in part regulates the practice of an officer.

(d) Committed an act that would constitute a felony or misdemeanor which could serve as a basis for decertification under subsection (1), whether or not the officer was criminally prosecuted.

(e) Been adjudged mentally incompetent by a court of competent jurisdiction, within or outside this State. In such cases, the Board shall either revoke the officer's certificate or suspend the officer's certificate until the officer can demonstrate that she has regained mental competency.

(f) Intentionally committed, or attempted to commit, one of the following acts:

- (i) Issued an order that the officer knew or reasonably should have known to be without authority or basis in law
- (ii) Deprived another person or persons of their legal rights.
- (iii) Knowingly detained a person, against the person's consent, knowing that the officer lacked the authority of law to effect the detention.

(g) Misused an electronic database.

(h) Used excessive force, as defined in [insert cross reference to state law].

(i) Failed to intervene. An officer who knows or reasonably should know that another officer is using or is about to use unauthorized force as defined in [insert cite to state law] shall have a duty to intervene immediately to prevent the use of unauthorized force, provided that the officer has the ability and opportunity to do so, and a reasonable person would believe that the intervention can be accomplished safely.

(j) Engaged in sexual harassment in the course of the officer's employment duties. For purposes of this Act, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

- (k) Discriminated against any person on the basis of that person's race, sex, gender, gender expression, gender identity, religion, sexual orientation, mental or physical disability, or immigration status.
 - (l) Failed to report information that the officer was required to report to the Board under Section [*reporting section*] or submitted a report to the Board containing a material false statement or omission [or were required to report to their own agency / another agency (i.e. failure to report to another agency that the officer resigned in lieu; or failure to fill out use of force report.).
 - (m) 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. Unprofessional conduct may include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer.
- (3) Notwithstanding the requirements of [insert cross reference to section on adjudicative process], the Board may immediately suspend an officer's certificate on an emergency basis where it finds that the officer
- (a) has been indicted, charged, or arrested for a felony, or any crime set forth in Section VI(1)(b); or
 - (b) the officer poses an immediate threat to public safety.

Within 7 days of suspending an officer's certification under this subsection, the Board shall convene a hearing where the officer shall have an opportunity to contest the Board's finding. If the officer chooses to contest the suspension, the Board shall issue an order either dissolving the suspension or maintaining the suspension within 10 days of the hearing, but in no event may the emergency suspension exceed 1 year or the final disposition of the disciplinary proceedings, whichever is sooner. The officer may seek judicial review of the Board's determination in accordance with [insert state APA citation(s)].

- (4) In determining the appropriate form(s) of discipline under paragraph (2), the Board shall aim to foster public trust, deter misconduct, promote public safety by considering the following factors:
- (a) Whether the certified officer used official authority to facilitate the misconduct;

- (b) The severity of the conduct at issue;
 - (c) The number of violations found by the Board;
 - (d) The number and severity of prior disciplinary actions taken against the officer by the Board;
 - (e) The danger to the public;
 - (f) The actual damage, physical or otherwise, caused by the misconduct;
 - (g) The pecuniary benefit or self-gain to the officer realized by the misconduct;
 - (h) Whether the misconduct was motivated by unlawful discrimination;
 - (i) Whether the officer has committed a pattern of unprofessional conduct that the Board believes may escalate;
 - (j) The recommendations of individuals who can speak to the officer's character or professional aptitude;
 - (k) The length of time the officer has been certified by the Board;
 - (l) Any effort of rehabilitation by the officer, or lack thereof;
 - (m) How much time has passed since the officer engaged in misconduct;
 - (n) the age of the officer at the time the officer engaged in misconduct;
 - (o) The clarity of the standard or law that the officer violated and whether the officer's conduct was intentional; and
 - (p) Likelihood that continued service would undermine public trust.
- (5) Within [180 days] of the passage of this Act, the Board shall promulgate regulations that adopt disciplinary guidelines and procedures to administer the penalties provided in paragraph (2). The Board may, by rule, prescribe penalties for certain offenses. The disciplinary guidelines and prescribed penalties must be based upon the severity of specific offenses. The guidelines must provide reasonable and meaningful notice to officers and to the public of penalties that may be imposed for prohibited conduct. The penalties must be consistently applied by the Board. The Board may, however, revise its disciplinary guidelines and penalties prospectively, in accordance with the procedures outlined in this Act.

- (6) If the Board opts to suspend an officer's certificate, it may, in determining the length of the suspension, consider the number of days of employment suspension imposed upon the officer by the employing agency for the same offense for retroactive or parallel inclusion in the length of a certification suspension imposed by the Board.
- (7) All findings of fact rendered by the Board, including under paragraphs (1) through (4) and (7) of this section, shall be based on a preponderance of the evidence.

SECTION VII: REPORTING MISCONDUCT AND OTHER INFORMATION

- (1) For purposes of this section, "police oversight agency" means any agency, board, or commission created by a political subdivision to accept and review complaints against law enforcement officers employed by the political subdivision.
- (2) Any person or entity who discloses information to the Board in good-faith pursuant to this Section is immune from civil liability arising from the disclosure.

(3) Permissive Reporting

- (a) Any person or entity may notify the Board of any conduct the person believes a Board-certified officer has committed that could give rise to discipline from the Board under Section [*section laying out grounds for discipline*]. Upon written request, the Board shall disclose to the person or entity who filed a notice of violation the status of the Board's review.
- (b) The notice of violation reported under subsection (a) shall be on a form prescribed by the Board. The Board shall make the form publicly available by paper and electronic means.
- (c) Nothing in subsection (b) shall preclude the Board from receiving, investigating, or acting upon allegations made anonymously or in a format different from the form provided for in subsection (b).
- (d) The identity of any person or entity reporting a notice of violation shall be kept confidential and may not be disclosed without the written consent of that person. 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.

(4) Mandatory Agency and Officer Reporting

- (a) An officer and his or her employing agency both shall report to the board, on a form provided by the board, any of the following within 5 business days:
- i. Separation of an officer from an employing agency for any reason, including termination, resignation, or retirement. If the employing agency accepts an officer's resignation or retirement in lieu of termination, the employing agency shall report its reasons and rationale to the Board, including the findings from any internal or external investigations into misconduct. [*Optional: The officer must be permitted to respond to the separation, in writing, to the Board, setting forth the facts and reasons for the separation as the officer understands them.*]
 - ii. Any disciplinary action taken against an officer by the employing agency or any other federal, state, or municipal agency, organ, or department. Disciplinary action includes any suspension, demotion, or reprimand. The agency must make available to the Board any records concerning the disciplinary action.
 - iii. Any arrest of the officer for any crime.
- (b) Any law enforcement agency that arrests anyone the agency knows to be an officer must report the arrest to the Board within 5 business days of the arrest.
- (c) The employing agency, as well as any police oversight agency, shall transmit to the Board any complaint it receives alleging officer conduct that could give rise to officer discipline pursuant to any the grounds for discipline specified in subsection (c), in a form to be determined by the Board, no later than [7-15] days after the complaint is filed. The Board, however, may establish a streamlined process for the reporting or handling of minor complaints that do not involve allegations involving the use of force or officer conduct that could give rise to criminal liability.
- (d) The employing agency and officer both shall notify the Board within [2-5] days (i) of any incident involving the use of physical force by the officer that resulted in death or serious bodily injury; or (ii) of learning that an officer has been charged with a crime, and any subsequent case dispositions (e.g., conviction, plea) following the charge(s).
- (e) The employing agency shall report to the Board on a form provided by the Board any other officer conduct or information that could give rise to officer discipline from the Board under (i) Section [*subsection laying out mandatory grounds for discipline in Section VI(1)*], (ii) Sections [*select permissive grounds for discipline from Section VI(2)*], and (iii) any other officer conduct or information that Board chooses to require—including the remaining grounds for discipline under Section [*permissive grounds for discipline, Section IV(2) above*]—no later than [7-15] days from the date the agency learns of the information.

*Note: Ideally, agencies should be required to report all instances of misconduct that could give rise to discipline or decertification. However, some state POSTs may realistically lack the capacity to track and investigate all instances of misconduct, and legislatures in these states may wish to define a narrower subset of misconduct that *must* be reported, and enable the POST to identify additional categories as it sees fit. Mandatory reporting categories should at a minimum include all of the grounds for which decertification is mandatory under this statute. States should also strongly consider including the following categories in which the Board may impose discipline on officers: all instances of excessive force, all criminal convictions, discrimination, failure to intervene, sexual harassment, being adjudged mentally incompetent, and officer conduct that would constitute a crime that could serve as a basis for Board discipline even if the officer was not criminally prosecuted. And of course, under subsection (a), above, agencies must always notify the POST of any discipline imposed, even if the conduct does not fall into one of the categories listed here.*

- (f) An officer's employing agency must submit any investigative findings and supporting information and documentation to the Board related to the triggering events or conduct identified in subsections (a) through (d) above in accordance with rules adopted by the Board. The Board may inspect and copy an employing agency's records to ensure compliance with this subsection.

(5) Enforcement

- (a) In order for a law enforcement agency to be eligible to receive any state law enforcement funding or any state-administered federal grant, the chief law enforcement officer of that agency must certify annually in writing to the Board that the agency complied with all of the requirements set forth in this section in the previous calendar year. If the chief law enforcement officer submits a written certification while knowing that the agency has not complied with all of the requirements set forth under this section, he or she shall be fined no more than [one-quarter or one-half] of his or her annual salary.
- (b) [Optional: An employing agency that fails to timely and accurately report officer information of which it was aware to the Board as required by this Section shall be strictly liable for any damages arising from misconduct on the part of the officer in question that occurs after the agency's failure to report. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs.]

- (c) The [State Attorney General] may investigate, and if warranted, bring a civil action against any law enforcement agency to obtain equitable or declaratory relief to enforce the provisions of this Section.
- (d) The Board may impose a civil penalty on officers and employing agencies not to exceed [\$5,000-\$25,000] per violation for the failure of an officer or an employing agency to timely and accurately report information as required by this Section.

SECTION VIII: INVESTIGATIONS AND BOARD DATA TRACKING

(1) Preliminary Review

- (a) When the Board learns of alleged officer conduct or information that could give rise to officer discipline under Section [*section laying out grounds for discipline*], the Board shall complete a preliminary review of the allegations to determine if there is sufficient information to warrant further investigation.
- (b) Upon initiating a preliminary review of the allegations, the Board shall notify the head of the agency that employs the officer who is subject of the allegations that the Board is conducting a preliminary review.
- (c) At the Board's request, the employing agency must submit copies of any relevant investigative findings, evidence, or documentation to the Board to facilitate the Board's preliminary review, in accord with rules adopted by the Board.
- (d) Assignment of Allegations for Further Investigation
 - (i) If, after a preliminary review of the allegations, (i) the Board believes an officer may have engaged in conduct or learns information that could provide a basis for revocation of the officer's certification under [*subsection setting forth grounds for mandatory certification revocation*] or (ii) the Board learns that a law enforcement agency terminated the officer's employment for-cause or that the officer resigned in lieu of termination or retired in lieu of termination, then the Board shall assign the allegations for further investigation in accord with subsection (2).
 - (ii) If, after a preliminary review of the allegations, the Board believes an officer may have engaged in conduct or learns of information that could give rise to officer discipline under [*subsections laying out all other grounds for discipline aside from the mandatory certification revocation subsection*], then the Board may at its discretion assign the allegations for further investigation in accord with subsection (2).

- (iii) If the Board determines further investigation is not warranted under subsections (i) or (ii), the Board shall notify the head of the agency that employs the officer who is subject of the allegations that the Board is not conducting further investigation.

(2) Further Investigation

- (a) The Board shall either conduct the further investigation itself or assign the further investigation to the agency that employs the officer or [*identify any other state agencies that may investigate, e.g., police oversight agency, State AG's office, etc.*]. The Board shall not assign further investigation to the employing agency when: (i) the employing agency requests that another agency or the Board conduct the further investigation and such other agency or the Board agrees to do so; or (ii) the Board determines that it or another entity should conduct the further investigation based upon the alleged facts and circumstances, including investigations involving an agency head, familial conflicts of interest, allegations concerning a substantial portion of officers employed by the agency, or allegations or complaints regarding an agency policy.

Note: If the Board has significant investigative capacity or a separate investigative arm,⁶ the above provision should expressly require the Board or its investigative arm to conduct further investigation, and should not provide the option of delegating further investigation to the employing agency. Alternatively, especially if the Board lacks significant investigative capacity, this subsection could expressly vest the Board with authority to appoint an independent investigator with auditing and/or law enforcement discipline experience to conduct further investigation on an ad hoc basis. Below is a provision so empowering the Board:

- (b) *Optional:* The Board may appoint an independent investigator to conduct further investigation under Section [above section]. The investigator shall have experience with auditing and/or holding officers accountable for misconduct. Neither the investigator nor the investigator's staff may be employed by the law enforcement agency that employs the officer under investigation.
- (c) The Board shall set a deadline of [6] months from the date of assignment for the entity assigned to conduct further investigation to complete its investigation. The entity may request a [1 to 6] month extension from the Board if the entity reasonably concludes it is not feasible to complete the investigation by the deadline. When requesting an extension, the entity must provide the Board with a written explanation for why it cannot complete its investigation by the deadline..

⁶ See, e.g., State of Georgia, *Peace Officer Standards and Training Council, Investigations Division*, https://www.gpostc.org/div_invest.php; Mass. Gen. L. § 8 (establishing “division of police standards” as arm of the Board that “investigate[s] officer misconduct and make[s] disciplinary recommendations to the commission”).

- (d) The entity conducting further investigation shall, within [7-15] days of completing an investigation, deliver an investigative summary report and copies of any evidence to the Board.
- (i) An investigative summary report shall contain, at minimum, each allegation and its elements followed by the testimonial, documentary, and physical evidence that is relevant to each allegation or element along with a list and description of each person interviewed.
 - (ii) If the Board finds the further investigation conducted is incomplete or deficient, the Board may direct the investigating entity to take additional investigative steps deemed appropriate to satisfactorily complete the investigation, or the Board may take such steps itself. The investigating entity or the relevant investigator for the Board then shall amend and resubmit the investigative summary report to the Board for approval.
 - (iii) Each agency shall establish written, publicly available policies and procedures for conducting further investigations under this Act. The Board shall, by [X date], promulgate additional guidance on how such investigations should be conducted.
- (e) The Board may, at any point, initiate a concurrent investigation under this Section. The entity tasked with conducting further investigation shall timely communicate and cooperate with the Board to the fullest extent. The Board shall promulgate rules that shall address, at minimum, the sharing of information and investigative authority such as subpoenas and witness interviews.

(3) Proceeding with Charges

If the Board elects to prepare and serve upon the officer a statement of charges, the Board shall do so no later than [4-6] months after receiving the investigative summary report, associated evidence, and any supplementary materials that the Board requests from the investigating entity.

(4) Data Tracking and Agency Reporting Obligations

- (a) The Board shall create and maintain a database containing records for each certified officer that includes:
- (i) the date of initial certifications and date(s) of any recertifications;
 - (ii) all charges brought by the Board and any discipline imposed by the Board against the officer, including suspension and decertification;

- (iii) the date(s) of any suspensions or decertification and the reason for said suspension or decertification;
 - (iv) all separations of an officer from an employing agency and the nature of the separations (e.g. resignation, retirement, termination, resignation-in-lieu-of-termination);
 - (v) the reasons for any separation of an officer from an employing agency, including whether the separation was based on misconduct or occurred while the employing agency was investigating the officer for violating the employing agency's rules or policies, or for other misconduct or improper action.
 - (vi) the nature and outcome of any disciplinary proceedings taken against the officer by an employing agency;
 - (vii) all complaints received by the Board under Section [reporting section] and the basis for the complaint;
 - (viii) any incident involving the use of force by the officer that resulted in death or serious bodily injury;
 - (ix) all arrests and criminal charges brought against the officer, as well as any subsequent case dispositions following the charges;
 - (x) any other officer conduct reported to the Board that could give rise to discipline under [*Grounds for Discipline section*]; and
 - (xi) any other information the Board deems appropriate.
- (b) The Board shall actively monitor the database to identify patterns of alleged officer misconduct that (a) could provide a basis for investigation under Section [*investigations section*] and (b) could inform the appropriate discipline to impose under Section [*grounds for discipline subsection laying out factors to consider when choosing the appropriate form of discipline*].
- (c) When deciding whether to assign allegations for further investigation under Section [*section setting forth when Board should assign allegations for further investigations*] after a preliminary review, the Board shall review the database and consider any patterns of alleged officer misconduct.

SECTION IX: ADJUDICATIVE PROCESS

State legislatures have ample experience and competence in designing administrative and adjudicatory regimes. For that reason, we have opted not to prescribe a specific framework for the adjudication of disciplinary proceedings. Instead, we recommend that States provide a process that is comparable to those that they already have in place for other regulated professionals (e.g. doctors, lawyers).

One way to accomplish this is to rely on the procedures embodied in the state Administrative Procedure Act. While extant state law should provide a ready roadmap, we do recommend that States consider adding one specific provision, which is to clarify that disciplinary proceedings may continue to go forward even where an officer voluntarily relinquishes her certificate, or her certificate is inactive or suspended for some other reason.

Proceedings of the Board in the exercise of its authority to discipline any officer under the terms of this Act shall be conducted in accordance with [insert cite to state Administrative Procedure Act]. The Board may issue regulations setting forth procedures for the adjudication of disciplinary proceedings. The lapse, suspension, revocation, or surrender of an officer's certification shall not affect the Board's power to investigate or to adjudicate disciplinary proceedings against the officer.

SECTION X: PUBLIC TRANSPARENCY AND PARTICIPATION

- (1) Notwithstanding any other state law or regulation, the Board shall make the following information publicly available on its website in an analyzable, machine-readable format. The information in subsections (a) and (b) shall be updated on a monthly basis. The information in subsection (c) shall be updated annually.
 - (a) All disciplinary proceedings pending before the Board where the Board has served a bill of charges against an officer, including the name of the officer, the officer's employing agency, the misconduct the officer is alleged to have committed with references to the specific categories of misconduct set forth in [cross ref Grounds for Discipline Section], and the current status of the case.
 - (b) All disciplinary proceedings that the Board has finally adjudicated where the Board served a bill of charges against an officer, including the name of the officer, the officer's employing agency, the misconduct the officer was alleged to have committed with references to the specific categories of misconduct set forth in [cross ref Grounds for Discipline Section], the final disposition, as well as any written order or opinion, whether issued by an ALJ, the Board, or a sub-committee of the Board.
 - (c) The following information for each report of alleged misconduct received by the Board during the calendar year that triggered a preliminary review under [cross ref to Investigations section]:

- (i) the source of the report (e.g. employing agency, officer self-reported, alleged victim, etc.);
- (ii) the nature of the alleged misconduct with references to the specific categories of misconduct set forth in [cross ref Grounds for Discipline Section];
- (iii) whether the Board initiated an investigation;
- (iv) whether the Board initiated disciplinary proceedings, and if disciplinary proceedings were initiated, the final disposition or current status of the case.

[The reference to “report” in subsection (c) is meant to encompass three protentional avenues that might alert the Board to information that would trigger a preliminary review: permissive reporting (§ VII(3)), mandatory reporting (§ VII(4)), and public reporting that the Board may become aware of outside the official reporting channels (e.g. a newspaper article). It’s also worth highlighting that this subsection only covers “reports” that triggered a “preliminary review.” Because a preliminary review is only triggered where “the Board learns of alleged officer conduct or information that could give rise to officer discipline,” this reporting requirement will exclude a sizeable chunk of mandatory reports to the Board (e.g. a voluntary separation of employment where the officer left to accept a higher paying job at another agency).]

- (2) All meetings of the Board shall be open to the public. The Board shall provide live streaming video and audio of its meetings on its website.
- (3) The Board shall provide all relevant information to the National Decertification Index maintained by the International Association of Directors of Law Enforcement Standards and Training. The Board may issue regulations identifying other similar national or regional indices it wishes to contribute officer discipline information to. In the event that the federal government establishes a nationwide decertification index, the Board may submit information to that index rather than the index maintained by International Association of Directors of Law Enforcement Standards and Training.

SECTION XI: COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other law, the provisions of this Act are not subject to collective bargaining under [insert applicable state law(s)]. The provisions of any collective bargaining agreement adopted by a governmental agency shall be inapplicable to the provisions of this Act or any action taken by the Board pursuant to this Act.

SECTION XII: PRE-CERTIFICATION CONSULTATION

In addition to the existing requirements set forth in [cross reference standards for certification], the Board must follow before certifying an applicant, the Board also shall communicate with the POST board of each state in which the applicant is currently or has previously been certified to determine whether each POST board has decertified, suspended, or imposed any other discipline on the applicant. If so, the Board shall consider how the discipline imposed affects the applicant's eligibility for certification.

SECTION XIII: RECERTIFICATION

- (1) The Board may issue a certificate to a qualified applicant consistent with the provisions of [cross reference standards for certification]. The Board shall determine the form and manner of issuance of a certification. A certification shall expire 3 years after the date of issuance.
- (2) Each certified officer shall apply for renewal of certification prior to its date of expiration as prescribed by the Board. The Board shall not recertify any person as a law enforcement officer unless the Board verifies that the applicant for recertification continues to satisfy the requirements of [cross reference to continuing education / training / good standing requirements].