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Testimony to the Senate Committee on Commerce
In Opposition to Senate Bill 366
February 17, 2020
Written & Oral Testimony

Chairperson Lynn and Members of the Committee:

The Kansas Commission on Peace Officers' Standards and training (KSCPOST) is responsible for regulating the law enforcement profession in Kansas. KSCPOST is committed to providing the citizens of Kansas with qualified, trained, ethical, competent, and professional peace officers. It is also dedicated to adopting and enforcing professional standards for certification of peace officers to promote public safety and preserve public trust and confidence. KSCPOST adopts and enforces rules and regulations that are necessary to ensure that law enforcement officers are adequately certified, trained, and de-certified when appropriate. KSCPOST also conducts administrative investigations related to law enforcement officer qualifications and misconduct.

For the following reasons, we are requesting that law enforcement and KSCPOST be added to the exempted professions on page 5, lines 34-35.

Employment with Kansas Law Enforcement Agency Necessary for Certification

Kansas law enforcement agencies struggle to fill vacant positions and often look to recruit out-of-state applicants. KSCPOST is committed to facilitating the certification of out-of-state applicants who wish to become law enforcement officers in Kansas. However, SB 366 directly conflicts with current state law.

KSCPOST does not have authority to accept a certification application directly from an applicant or issue a certification to an individual who is not employed by a Kansas law enforcement agency. However, SB 366 would require KSCPOST to do so in certain circumstances. The Kansas Law Enforcement Training Act (KLETA), K.S.A. 74-5601 *et seq.*, constitutes the statutory provisions by which law enforcement officers are certified. Pursuant to K.S.A. 74-5605:

- (a) **Every applicant for certification shall be an employee of** a state, county or city law enforcement agency, a municipal university police officer, a railroad policeman appointed pursuant to K.S.A. 66-524, and amendments thereto; an employee of the tribal law enforcement agency of an Indian nation that has entered into a tribal-state gaming compact with this state; a manager or employee of the horsethief reservoir benefit district pursuant to K.S.A. 82a-2212, and amendments thereto; or a school security officer designated as a school law enforcement officer pursuant to K.S.A. 72-6146, and amendments thereto. [Emphasis added.]

Law enforcement officers are agents of the government who receive the authority to act as such through a variety of statutes. That authority is immense and includes the ability to detain citizens, powers of arrest, the use of firearms, and powers of search and seizure. An officer's nexus with a law enforcement agency is fundamentally imperative and required by law. Therefore, as SB 366 would require that some out-of-state applicants be granted certification without first gaining employment with a Kansas law enforcement agency, an exemption from the bill is necessary.

SB 366 Requires Certification of Applicants Who Do Not Meet Minimum Qualifications

In addition to employment with a Kansas law enforcement agency, applicants for law enforcement certification must meet eight minimum requirements. In addition to other requirements, the applicant must be a citizen of the United States, be at least twenty-one years of age, and complete psychological testing to ensure that the applicant is able to perform essential law enforcement functions with reasonable skill, safety, and judgment. See K.S.A. 74-5605(b). While SB 366 would allow KSCPOST to consider certification requirements in some states, it would also require KSCPOST to issue a law enforcement certification to certain applicants that may not meet minimum certification requirements if the applicant previously worked in a state that does not use government certification. For example, Hawaii does not currently have a functioning statewide law enforcement standards board and has no standardized certification requirements. Law enforcement requirements in Hawaii are determined at an agency level and allow a twenty-year-old permanent resident alien to attend basic academy and become a law enforcement officer. If a law enforcement officer from Hawaii met the other requirements in the bill and applied for reciprocal certification in Kansas, SB 366 could require KSCPOST to issue a certification to that applicant, even if the Kansas minimum requirements are not met and the applicant is not currently employed by a Kansas law enforcement agency. To do so would exceed KSCPOST's statutory authority.

Further Conflict with Current Law Enforcement Certification Statutes

SB 366 provides that KSCPOST may continue to utilize current reciprocity statutes if they are more favorable to applicants. However, if KSCPOST reciprocity provisions are less favorable to applicants, a reciprocal certification must be issued to certain applicants that hold a valid current out-of-state certification. This provision is problematic for several reasons.

SB 366 states that the licensing agency may determine if their current reciprocity statutes or the provisions included in the amendment are more favorable to the applicant. As stated above, the KLETA requires that an applicant for certification must be employed by a law enforcement agency. However, an applicant could reasonably argue that it would be more favorable to them to be granted a certification without first gaining employment in the state. This conflict between the KLETA and SB 366 creates confusion for out-of-state applicants seeking reciprocal certification, directly conflicts with current law enforcement certification statutes, and could subject KSCPOST to unnecessary litigation due to that conflict.

Additionally, SB 366 directs that if an applicant holds a valid current certification in a state with substantially equivalent certification requirements, and meets the other factors enumerated therein,

then KSCPOST shall issue a certification to the applicant. However, the amendment is silent on substantially equivalent decertification factors. A number of states do not have authority to decertify officers that have engaged in misconduct. Other states are extremely limited in their decertification authority, only decertifying for felony and domestic violence convictions, for example. This allows law enforcement officers who engage in misconduct to remain certified and employed in those states that do not decertify law enforcement officers. The media has illustrated this problematic system on numerous occasions on a national level. See Attachment A. Thus, an out-of-state officer may hold a “valid” out-of-state certification, have engaged in misconduct or criminal behavior, but never have been investigated or disciplined for that behavior. That officer would nevertheless be eligible for Kansas certification pursuant to SB 366.

Temporary Permit

SB 366 provides that if KSCPOST denies reciprocal certification to an applicant under certain circumstances, a temporary permit shall be issued to allow the applicant to lawfully practice law enforcement. Again, this is unreasonable and impractical given the unique connection of law enforcement certification and employment. Any and every temporary permit of this nature would jeopardize the safety of the public. A law enforcement officer requires both a certification from KSCPOST, and authority to act through agency employment. It would be perilous to issue an out-of-state applicant a temporary permit indicating that they may lawfully, in a rogue fashion, make arrests, use force, and effect searches and seizures without the jurisdiction and authority to do so. This is another area where failure to exempt KSCPOST creates confusion for applicants and possible causes of action against KSCPOST.

Current Law Enforcement Certification Reciprocity is Sufficient

Under current law, an out-of-state officer need merely obtain employment with a Kansas law enforcement agency. The officer will then be granted a provisional certification which authorizes them to act as a law enforcement officer for that agency. After an out-of-state candidate is hired, the Director of Police Training at the Kansas Law Enforcement Training Center (KLETC) will assess the individual’s prior training and experience to determine what additional training is necessary. At a minimum, officers granted certification through reciprocity will attend a one-week class at KLETC that focuses on Kansas law. The officer attends the reciprocity class at no personal expense and is paid by their employing agency while they attend. KLETC will also provide a cursory review for out-of-state applicants seeking to determine their reciprocity eligibility. Roughly ten percent of certifications issued by KSCPOST are reciprocal certifications. Due to the intricacies of law enforcement certification, an exemption for KSCPOST from SB 366 is appropriate.

Respectfully submitted,
Michelle R. Meier
Commission Counsel
Kansas Commission on Peace Officers’ Standards and Training

ATTACHMENT A

NEWS

California lawmakers: Time to consider revoking badges of problem police officers

Concern emerges in Sacramento after series exposes more than 80 officers working with criminal convictions

By **ROBERT LEWIS** and **DAVID DEBOLT** || Investigative Reporting Program, UC Berkeley

PUBLISHED: November 14, 2019 at 6:00 am | UPDATED: November 14, 2019 at 6:01 am

State lawmakers this week said it's time for California to consider joining 45 other states that can revoke the badges of officers who commit crimes and engage in other serious misconduct.

The call for action comes in the wake of a six-month investigation from a statewide coalition of news organizations, including the Southern California News Group, that revealed more than 80 law enforcement officers working today in California have a prior criminal conviction.

With demands for more police accountability growing in Sacramento, Democrats and a Republican on state public safety committees said they are deeply concerned about revelations in the series.

Jackson said she was “upset and angered,” particularly about officers routinely pleading down domestic violence charges to lesser crimes that allow them to keep their guns and, in some cases, remain on the job.

California is one of only five states in the country that doesn’t “decertify” an officer for misconduct — or essentially take away a license to work in law enforcement. Instead, almost all hiring and firing decisions are up to local departments.

So while many departments hold officers to the highest ethical standards, there are some that allow officers accused — and even convicted — of egregious misconduct to stay on the force.

And some small rural departments have a history of hiring castoff cops. For example, the news coalition’s investigation found the police department in the Kern County city of McFarland hired more than a dozen officers in the last decade — nearly one of every five officers — who were either sued or fired from another department for misconduct or convicted of a crime.

Jackson said the question now for her fellow legislators is: “Do we want some kind of state oversight?”

‘Right thing to do’

At least one Republican legislator agrees. State Sen. John Moorlach, who represents parts of Orange County, is vice chairman of the Senate’s Public Safety Committee. Moorlach said he’d likely support more state oversight, including decertification.

“It’s the right thing to do. It’s not a partisan issue. It’s about quality control,” Moorlach said.

Assemblywoman Buffy Wicks, an Oakland Democrat who sits on the Assembly’s Public Safety Committee, agreed.

“There’s no denying that we need to explore changes once this level of sunlight is cast on law enforcement,” she said in a statement.

Earlier this year, reporters from the Investigative Reporting Program at UC Berkeley obtained a secret state list of nearly 12,000 officers and applicants with convictions in the past decade. But the state Attorney General's Office refused to say who on the list was an actual officer. Reporters ultimately were able to review about 1,000 court files and used news clips to identify other cases.

Attorney General Xavier Becerra has refused to answer questions about the list and his office declined numerous interview requests before the series was published and again for this story.

Smear on reputation of police

Michael Rains, a Bay Area-based lawyer who represents law enforcement, including officers named in the newspapers' investigation, said he was "dismayed" to read about the crimes committed by police officers, calling them a "smear on the great name and reputation of their colleagues."

"I'm a firm believer the badge is something that should be valued and honored by law enforcement officers," Rains said. But, "rather than saying we have 630 bad apples, that's the wrong way to look at it. We have close to 80,000 good ones. Those are the ones we should be thanking for all that they do."

California Police Chiefs Association President Ronald Lawrence echoed those comments earlier this week in a statement, stressing that only a tiny percentage of officers are convicted of crimes. There are about 79,000 sworn officers in California.

"Our criminal justice system, for both the public and peace officers, must offer due process as well as pathways for an individual to accept accountability and correct their mistakes," Lawrence wrote. "For those who are deserving and willing to embrace accountability and retraining, there must be a way to retain experienced, well-trained officers in an environment that is already difficult to recruit new hires."

Low pay undermines hiring

Rains, who is also a former police officer, said he's seen examples around the state of troubled small agencies like McFarland, due to a combination of low pay and benefits and a smaller pool of applicants.

“Departments are lamenting the fact that the people they are hiring don’t have, in some cases, the level of education, life experience and maturity that in an ideal world they’d prefer,” Rains said. “If those agencies get in such trouble they can’t find quality candidates and individuals that have not had problems elsewhere, they should call the county sheriff to bail them out.”

Powerful police unions have had strong pull over the years in Sacramento, but the latest call for more accountability comes after California enacted a law known as SB 1421 that opened some officer disciplinary records to the public for the first time. However, after unsuccessfully fighting the law in court, many departments have been slow to comply.

Rains said he is not opposed to the state asserting some control over decertifying officers, but he would “insist it be a fair, impartial and thorough investigation” that sometimes does not occur at the local level due to what he called “politics and mob rule.”

“That’s a joke,” Rains said, “and that’s not fair to anybody.”

This story is part of a collaboration of news organizations throughout California coordinated by the Investigative Reporting Program at UC Berkeley and the Bay Area News Group. Reporters participated from more than 30 newsrooms, including MediaNews Group, McClatchy, USA Today Network, Voice of San Diego, and Reveal from the Center for Investigative Reporting. [Click here](#) to read more about the project. Email us at cacriminalcops@gmail.com.

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PUBLIC SAFETY

In disciplining cops, Pennsylvania's standards trail other states



Jeffrey Benzing | November 19, 2018



(Photo by ArtOlympic/Shutterstock)

Some states take a hard stance on problem cops.

Take the Kansas officer who claimed to be out on the streets, except a GPS tracker showed his patrol car [parked at home](https://www.kscpost.org/integrity/integrityapril16.pdf) (<https://www.kscpost.org/integrity/integrityapril16.pdf>). And another officer who backed into a pick-up truck in his cruiser; he claimed it didn't happen but video from a patrol car [showed otherwise](https://www.kscpost.org/integrity/integrityjan18.pdf) (<https://www.kscpost.org/integrity/integrityjan18.pdf>).

Both are banned from the profession, not for crimes, but for a lack of "moral character."

In Arizona, an officer told a fabricated story during a military training weekend about [killing two suspects](https://post.az.gov/sites/default/files/documents/files/Integrity%20Bulletin%20Vol%2080.pdf) (<https://post.az.gov/sites/default/files/documents/files/Integrity%20Bulletin%20Vol%2080.pdf>). He lied, so the state barred him from law enforcement.

Jack Lane, recently retired executive director of the Arizona agency responsible for police standards, explains that residents "really have an expectation" that the state keep a high bar for officers.

In Oregon, the state [banned a police officer](https://www.oregon.gov/dpsst/SC/EthicsBulletin/Volume%20160.pdf) (<https://www.oregon.gov/dpsst/SC/EthicsBulletin/Volume%20160.pdf>) who had sex with a civilian while on duty and destroyed related evidence after being confronted. Another was banned for using [excessive force](https://www.oregon.gov/dpsst/SC/EthicsBulletin/Volume%2058.pdf) (<https://www.oregon.gov/dpsst/SC/EthicsBulletin/Volume%2058.pdf>) in a traffic stop.

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Would Pennsylvania take away their badges?

Only with a criminal conviction.

Because lawmakers gave limited authority to the agency responsible for police certification, Pennsylvania has no oversight over noncriminal findings of misconduct, aside from dishonesty during the certification process.

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After the June fatal shooting of Antwon Rose II by East Pittsburgh officer Michael Rosfeld, some Democratic lawmakers called for more state oversight. Planned legislation includes the creation of an independent investigative authority and new disciplinary standards beyond those currently held by the Municipal Police Officers' Education and Training Commission [MPOETC].

Rosfeld, who faces trial for criminal homicide, previously resigned from the University of Pittsburgh under threat of termination. He is accused in a July civil lawsuit of fabricating information in a police report, which his lawyer publicly denied.

“It’s an extensive process and certainly has its good qualities and bad qualities.”

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If convicted for the shooting, Rosfeld would be automatically banned from law enforcement. If not, he’s legally allowed to continue working as a police officer. That standard trails several other states where a conviction is just one cause for decertification.

Pennsylvania holds its sheriff’s deputies to higher standards than its municipal police officers. Licensed professionals ranging from doctors to barbers are also under more scrutiny.

While Kansas decertified 30 local officers this year (not including deputies and state police), Pennsylvania tallied only 35 decertifications since 2014. And Pennsylvania has nearly five times as many local police officers as Kansas.

Of the 35 decertifications in Pennsylvania since 2014, 32 decertifications were for disqualifying criminal convictions. Of the other three: One officer was decertified for cheating on her police exam, another for lying on his state application. One chief was decertified on a technicality for not holding an active job in law enforcement, though he was also convicted on a low-level misdemeanor for possessing chemical solvent (https://www.dailyitem.com/the_danville_news/news/mahoning-settles-with-fired-police-chief/article_b6011fea-7f27-11e6-83b8-43029ff25a27.html) he’d been accused of huffing.

That in itself wouldn’t bar his employment. The threshold for being labeled a problem cop in Pennsylvania is higher than that.

“The only thing is they need to be sure they don’t get convicted of some pretty serious crimes,” said Elizabeth Randol, legislative director of the American Civil Liberties Union of Pennsylvania.

Should conviction be the standard?

Six years ago, Kansas looked a lot like Pennsylvania.

Gary Steed, executive director of the Kansas Commission on Peace Officers’ Standards and Training, explained that his state previously banned cops only when convicted of felonies, or domestic violence offenses.

The state required “good moral character,” but Steed said the rules regarding convictions incentivized officers to plead down more serious crimes to misdemeanors and avoid decertification. Notably, in Pennsylvania, decertification occurs upon conviction of a second-degree misdemeanor or higher.

In 2012, Kansas (<https://www.kansas.com/news/local/article123773539.html>) increased scrutiny, specifying 58 misdemeanors that can trigger decertification. Crucially, the new rules enable revocation even if an officer is never charged. Basically, its process no longer hinges on the criminal justice system. A fact-

finding investigation would still be done to determine if misconduct occurred, and the state could move forward with discipline regardless of if an arrest is made.



Protestors in downtown Pittsburgh calling for justice after the June 19 shooting of Antwon Rose II. (Photo by Maranie Rae Staab/PublicSource)

The point isn't whether an officer is a criminal. It's whether the state can trust them to carry a gun and a badge.

"That's really the gold standard," said Roger Goldman, professor emeritus at the Saint Louis University School of Law and a leading expert on decertification laws.

But in Pennsylvania, criminal conviction is the standard.

Maj. Troy Lokhaiser, executive director of MPOETC, said the commission is limited by the state's decertification regulations.

"Misconduct is really kind of left up to the [individual] department" to investigate, said Lokhaiser, who is not a voting member of the commission.

The responsibility falls on local departments to weed out bad officers and to find out if prospective hires have done wrong elsewhere. MPOETC's authority is limited to local officers, not state troopers or sheriff's deputies, except for in Allegheny County. The Pennsylvania State Police manage the MPOETC.

The danger, Goldman said, is that an officer may be justifiably fired from one department (or pressured to resign), only to be hired in another town. Maybe the new bosses don't know about alleged misconduct. Perhaps they don't care.

He points to the roving career of Timothy Loehmann, the former Cleveland officer who fatally shot 12-year-old Tamir Rice in 2014.

Before Cleveland, Loehmann worked briefly in Independence, Ohio, before abruptly resigning. His personnel file deemed him unfit for duty and unstable emotionally.

(<http://www.latimes.com/nation/nationnow/la-na-nn-cleveland-tamir-rice-timothy-loehmann-20141203-story.html>). Several departments passed on hiring him. Cleveland never reviewed the record.

When will PA take disciplinary action?

Loehmann was fired from Cleveland but recently was hired by the small Ohio town of Bellaire, which is about 60 miles southwest of Pittsburgh. The chief there defended the decision to offer him a second chance, though Loehmann ultimately decided not to take the position.

Ohio's law is similar to Pennsylvania's in that it hinges on criminal conviction (though at the felony level).

Goldman says a conviction is "clearly too high a bar."

In July, Allegheny County Police Superintendent Coleman McDonough told Democratic lawmakers at a public meeting that one major challenge in hiring and vetting officers is reluctance by previous employers to share negative performance information, fearing legal consequences.

Sen. Sharif Street, D-Philadelphia, said there is no reason municipalities can't share truthful information of employee misconduct.

"It is appalling that people who have already been terminated are able to obtain additional law enforcement positions," Street said at the July meeting, held in Wilkesburg after the East Pittsburgh shooting.

McDonough, who previously served as chief in Mt. Lebanon, said local governments may still be wary of making a legal misstep. Wilkesburg Police Chief Ophelia Coleman explained to lawmakers that she called another department to voice concerns about a new officer who left Wilkesburg after a brief stint. But any action, she said, is "up to them now."

The president of the Pennsylvania Chiefs of Police Association referred an interview request on decertification to MPOETC, as did the president of the statewide Fraternal Order of Police.

Local departments must inform MPOETC when officers are terminated, Lokhaiser said. Besides criminal convictions, officers can be decertified for not maintaining employment under the police certification law known as Act 120.

The commission typically decertifies unemployed officers when they are also convicted of a disqualifying crime, Lokhaiser said.

According to state records going back to 2014, only one officer was decertified solely for being fired by a department. That case involved the former chief of Mahoning who pleaded guilty to a third-degree misdemeanor for possessing a chemical solvent used to get high.

If he wasn't fired or had been hired elsewhere, the board would not have had the authority to decertify him because the offense itself is not severe enough to be career-ending.



"It is appalling that people who have already been terminated are able to obtain additional law enforcement positions."

Similarly, Oregon's Department of Public Safety Standards and Training defers investigations of misconduct by working officers to their home departments (a blindspot [investigated in-depth by the Oregonian](https://projects.oregonlive.com/police/state-oversight/) (<https://projects.oregonlive.com/police/state-oversight/>) last year).

"I would be remiss not to acknowledge the huge gaping hole that being secondary creates," said Lindsay Hale, director of the agency's professional standards division.

But the law, which has been lauded as a model, also has robust power to decertify police who are fired with cause or demonstrate moral failings such as dishonesty. In 2018, Oregon revoked 13 certifications from local officers, based on statistics for closed cases available through Nov. 6. Only two of those revocations were for criminal conduct.

Matthew Hickman, a criminal justice professor at Seattle University, analyzed decertifications from 2015 and his findings show that Pennsylvania has comparably few decertifications to other states. Georgia decertified 281 officers in 2015, and Florida decertified 102 officers. Pennsylvania decertified two officers that year, up from zero in 2014.

Hickman cautioned that state rules vary, including which types of law enforcement are even covered and the strength of their authority.

"You've got a hodgepodge when you look at the 50 states," he said.

Sheriff's deputies and barbers

If Pennsylvania lawmakers are seeking examples of stronger decertification rules, there's no need to cross state lines.

Since 2014, the Pennsylvania Commission on Crime and Delinquency (PCCD) has had decertification authority over the county sheriff deputies through its Sheriff and Deputy Sheriff Education and Training Board. Criminal convictions are one reason for decertification.

But so is firing due to misconduct, which could include perjury or making false statements.

"Misconduct in any form could be considered by the Board," Derin Myers, the PCCD's acting executive director, wrote in an email.

In practice though, the board has only revoked certification for deputies for criminal convictions. That's happened seven times in four years.

The PCCD lists decertified officers in online meeting notes, but it does not share the names directly with MPOETC. Meanwhile, MPOETC requires a formal records request if members of the public want to see the names of decertified officers.

MPOETC does voluntarily contribute to a national decertification database (<https://www.iadlest.org/>), which enables departments outside the state to inquire about problems in Pennsylvania. The PCCD doesn't. As Myers explained, "due diligence for background checks is the responsibility of the employing agency."



State Rep. Jake Wheatley is preparing a bill to increase oversight of law enforcement. (Photo by John Hamilton/PublicSource)

Jake Wheatley, D-Allegheny, plans to introduce legislation next year to create a licensing board to investigate misconduct and set discipline standards.

Steven Williams, a research analyst for the Pennsylvania House Democratic Finance Committee, said the idea is modeled on other licensing organizations, such as those that cover lawyers and barbers.

In Pennsylvania, for instance, barbers can be barred from the profession for being "unethical or dishonest," if they are "grossly incompetent" or impaired by drugs and alcohol. Not so for police.

Veterinarians, doctors and lawyers have similar rules to barbers, specifically focused on integrity.

Williams said the proposed police licensing board would cover all Pennsylvania law enforcement, though details are still in flux.

Lokhaiser acknowledges constraints MPOETC faces, but he's hesitant to critique the decertification system. He said his office follows the authority handed down by MPOETC's commissioners and state lawmakers.

"It's an extensive process and certainly has its good qualities and bad qualities," Lokhaiser said. "Not bad qualities really, but it's certainly bound by the regulations."

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