

**Advisory Committee on Police Standards
Public Hearings
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Camden, NJ**

Testimony of Roger Goldman

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today. My name is Roger Goldman. I am the Callis Family Professor of Law at Saint Louis University School of Law, where I've taught Criminal Procedure and Constitutional Law since 1971. For the past 20 years, my colleague, Steven Puro, and I have been studying a relatively new approach to insuring law enforcement professionalism: licensing of police officers¹. Forty-three states currently have licensing²; of the seven states that do not license, five are in the Northeast, including New Jersey. To sustain the advances made by the State Police in resolving the racial profiling issue, this Committee should recommend a state-wide licensing system applicable to all sworn officers in the state—county, municipal, and state. The state should regulate its professions and occupations, not the federal government.

¹ Roger Goldman & Steven Puro, *Decertification of Police: An Alternative to Traditional Remedies for Police Misconduct*, 15 Hastings Const. L.Q. 45 (1987); Roger Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct*, 45 St. Louis Univ. Law Jnl. 541 (2001); Roger Goldman, *State Revocation of Law Enforcement Officers' Licenses and Federal Criminal Prosecution: An Opportunity for Cooperative Federalism*, 22 St. Louis Univ. Public Law Rev. 121 (2003).

² Most states use the term "certificate". Five states use the term "license"—Michigan, Minnesota, Missouri, North Dakota and Texas. In fact, the certificate in these states is the equivalent of a license.

It is not unusual for states to consider licensing in the context of race³. In two states, adoption of their licensing laws came after serious racial incidents—in 1980 in Florida, after acquittal of white police officers for the alleged beating to death of a black motorcyclist after a minor traffic violation, and in 1977 in Minnesota, after the refusal to indict several police officers involved in shooting incidents, including the death of the son of a well-known black civil rights activist.

Licensing is a win-win situation—it professionalizes law enforcement and protects officers who have a right to expect that their colleagues have the continuing ability to perform their jobs in an ethical manner. And licensing is a state-wide mechanism that protects citizens in all parts of the state in the same way that states insure that other professions and occupations can weed out those few professionals who have seriously abused the rights of citizens. We take it as a given that any profession or occupation that involves interaction with the public will be fully regulated by a state agency.

Arguably, there is more of a need for a system of licensing and removing the license of law enforcement officers than for most of the professions now

³ Montana's Code of Ethics, Rule 23.14.415 (3) (a) provides: A peace officer shall perform all duties impartially, without favor or affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity.

regulated by New Jersey: no other occupation has the authority to use deadly force, arrest and search; and unlike other regulated professionals, such as doctors or lawyers, citizens do not get to choose their law enforcement providers—the local police chief, the county sheriff or the superintendent of the state police puts the officers on the streets. In addition, unlike civilian review boards, which have sometimes been opposed on the grounds that police are being singled out compared to other municipal officers, like firemen, state licensing is the norm for virtually every other occupation.

Over the years, I have analyzed the kinds of cases that have resulted in revocation of licenses of law enforcement officers in other states and a great many involve sexual assaults on females, often in exchange for not arresting the female driver for a traffic offense. Sam Walker has written about this phenomenon, known as Driving While Female. Currently in New Jersey, only if the officer is convicted of or pleads guilty to a crime involving dishonesty or a crime of the third degree or above or a crime that involves or touches on his office would he forfeit his position⁴. However, licensed

⁴ N.J.Stat. § 2C:51-1.

professionals, like doctors, can lose their licenses for **commission** of certain conduct; there is no requirement that there first be a criminal **conviction**.⁵

Historically, local chiefs, county sheriffs and state superintendents had the power to hire and fire, without additional oversight. State regulation began when it was determined that state-wide training standards needed to be implemented—this occurred in New Jersey for the state police in the early 1900s, for local and county officers in the 1960s. In New Jersey, municipal, county and other sworn officers are given basic training at academies approved by the New Jersey Police Training Commission (PTC). The successful trainee receives a diploma from the training academy and a certificate from the PTC that the basic training course was completed. State police in New Jersey have their own training standards and facilities. In some licensing states, a comprehensive licensing exam, like the bar exam, is given to those who graduate from the academy. Further, there are continuing education requirements, beyond basic training.⁶

⁵ *In the Matter of Polk*, 449 A.2d 7 (1982) (license of doctor revocable for gross malpractice and misconduct for having sex with five female patients).

⁶ By statute, New Jersey has imposed training in certain subjects, e.g., domestic violence, but the PTC does not oversee this training.

Aside from its training function, the PTC has no other role, whereas in the 43 licensing states, the state agency, typically called the Peace Officer or Criminal Justice Standards and Training Commission (POST), insures that the officer meets specified qualifications standards and is involved in overseeing that hiring agencies have done background checks that address the state standards. In New Jersey, that function is solely in the hands of the hiring agency.⁷

In the 43 licensing states, POST has the power to revoke the license of officers who have committed specified misconduct⁸. The power of POST to **revoke** is different from the power of a hiring agency to terminate the employment of the officer.⁹

Why the need for state revocation, since no department should want to hire an officer previously terminated for misconduct from another department?

This was the question put to then Commander of Internal Affairs of the St. Louis Metropolitan Police Department, Clarence Harmon, at a legislative

⁷ N.J. Stat. § 40A: 113-122 includes a provision that the officer must be of good moral character and has not been convicted of any criminal offense involving moral turpitude.

⁸ Most statutes permit the imposition of lesser sanctions, such as probation, suspension, reprimand, etc.

⁹ N.J.Stat. § 40A: 14-147 provides that a police officer may be terminated from employment with his department only for “incapacity, misconduct or disobedience of rules and regulations established for the government of the police department and force”.

hearing on Missouri's proposed licensing law in the 1980s. Captain Harmon replied that in 90% of the cases of an officer fired or resigning under fire from his department, the officer would apply to a department in St. Louis County. And the reason the chiefs at the second department would wink at the previous misconduct was strictly economic: the officer still had his basic training certificate so he did not have to be sent to the training academy or paid during the time he was at the academy. As damaged goods, his did not have much leverage in salary negotiations. This is a major reason why regulation of peace officers cannot be left solely up to hiring agencies: state oversight can prevent the all too common problem of an unfit officer who is dismissed or resigns from one department from getting a job in another town in the state, only to repeat the misconduct.

The POSTs keep track of the whereabouts of all licensed officers; when the officers leave the department that hired them, the department must inform POST of the leaving as well as the circumstances surrounding the departure. The new department must inform POST of the hiring. In contrast, the NJPTC has no jurisdiction over the officer once the certificate is issued and has no idea of the whereabouts of the officers once the basic training certificate is sent to the officer.

Another advantage of a licensing system is that it can address the issue of the interstate movement of law enforcement officers, both leaving and coming to New Jersey. Over the years, in other states, there have been high profile cases of officers, who engage in serious misconduct in one state, going to another state where they are hired without the new department's knowledge of the previous misconduct, and they then repeat that misconduct in the receiving state. To address this problem, 23 states participate in the National Decertification Database (NDD), funded by DOJ and administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST). The participating states have submitted the names of 7,500 officers whose licenses have been revoked by POSTs¹⁰. Since New Jersey has no authority to revoke licenses, no New Jersey officer who has been convicted of a crime and had his office forfeited could appear on the NDD. With respect to an out-of-state officer seeking to become a police officer in New Jersey, no New Jersey hiring agency can query the NDD, since only an IADLEST member may query the NDD. The NJPTC is the sole IADLEST member in the state, but since it has no role in background checks, it does not query the NDD. By the end of the year, the database will become known as the National Decertification Index (NDI)

¹⁰ There have been a total of 19,000 decertified officers through 2005, according to an IADLEST survey.

and a local agency, if approved by the IADLEST member may query the Index.

In summary, I recommend that New Jersey enact a licensing law that would apply to all municipal, county and state law enforcement officers¹¹. Every officer should be subject to licensing, from the new recruit to the chief¹². Reporting of resignations and terminations by hiring agency heads should be made to the state agency. Grounds for revocation should include not just conviction of a crime but also commission of statutorily defined misconduct, after a due process hearing. New Jersey should participate in the NDI by submitting names of officers whose licenses have been revoked and query the NDI whenever an out-of-state officer seeks employment in the state.

Thanks for your attention. I would be pleased to answer any questions you might have.

¹¹ Approximately 50% of the states that license include corrections officers—local, county or state.

¹² In some states, constitutional officers, such as sheriffs, have been held by courts to be exempt from the licensing statute.