

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB5051E

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Simon

3. Committee: House Committee on Public Safety

4. Title: Law-enforcement officer; notice to Criminal Justice Services Board of decertification.

5. Summary: The proposed legislation requires any sheriff, chief of police, or agency administrator to notify the Criminal Justice Services Board (Board) in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has been terminated for engaging in misconduct, as specified. It also requires the Board to initiate decertification proceedings against any current or former law-enforcement or jail officer who has engaged in such activities. Furthermore, the proposed legislation requires any sheriff, chief of police, or agency administrator to notify the Board and a civilian review panel, if one has been established, if any certified law-enforcement or jail officer currently employed by his agency has received three complaints of excessive use of force in the previous five years, and any recommendations made by the civilian review panel concerning such complaints shall be forwarded to the Board. The proposed legislation also establishes that any finding of misconduct in subsection B of §15.2-1707 will not be considered final until all grievances or appeals have been exhausted or waived and the finding of misconduct is made final.

6. Budget Amendment Necessary: Yes. The amended budget (HB5005/SB5015) includes funding and one position (\$94,825 the first year and \$113,790 the second year) in Item 403 for the Department of Criminal Justice Services to implement the proposed legislation. This funding assumes funding for ten months of personnel costs in FY 2021 and full funding in FY 2022.

However, the Office of the Attorney General also requests funding and one additional Assistant Attorney General position, at an annual cost of \$138,599, in order to address an anticipated increase in decertification hearings (\$115,499 the first year and \$138,599 the second year).

7. Fiscal Impact Estimates: Preliminary (see Item 8 below).

8. Fiscal Implications: The Department of Criminal Justice Services (DCJS) states that expanding the factors that allow for the decertification of a law-enforcement officer will result in more decertifications, and, therefore, as a result, more appeal hearings. DCJS reports that it is not possible to be certain how many additional decertifications and appeal hearings may result from the proposed legislation; however, based on existing data, DCJS reports that

on average the agency has reviewed seven decertifications per year since 2012. The lowest number (five decertifications) was reviewed in 2012, and the highest number (15 decertifications) was reviewed in 2018.

Currently, DCJS states that review of decertifications for appeal hearings constitutes 35 percent of the time of one full-time position. DCJS estimates that it is likely that 20 additional decertifications a year (which is the equivalent of 0.1% of currently certified law enforcement officers) could result from the implementation of the proposed legislation. As a result, DCJS anticipates that an additional full-time staff position may be necessary to review, process, and prepare decertifications for appeal hearings. The amended budget (HB5005/SB5015) includes funding and one position (\$94,825 the first year and \$113,790 the second year) in Item 403 for Department of Criminal Justice Services to implement the proposed legislation.

The Office of the Attorney General (OAG) is responsible for representing the Criminal Justice Services Board (Board) at decertification hearings. The OAG reports that, given the expansion in categories for which a law-enforcement officer could be subject to decertification, it is highly likely that the number of decertification hearings will increase considerably over the next year or so.

The OAG is unable to estimate the number of law-enforcement officers who may be terminated for violations of state or federal laws. This is because many may be terminated without being charged with the relevant criminal violation. The OAG states that this is especially true in situations where the violation is discovered through administrative investigations subject to Garrity protections (*Garrity. New Jersey, 385 U.S.493 (1967)*), which bar subsequent criminal prosecution. Additionally, departmental policies and procedures can vary greatly between rural and urban police departments making it difficult to estimate the number of law-enforcement officers terminated for departmental policy violations.

The OAG believes the bill likely will impact the number of decertification hearings. Additionally, the agency expects client agency advice requests to increase as the Board adopts rules and procedures regarding the new categories allowing for decertification, and reviews large amount of information received by the Board regarding these new categories. Therefore, the OAG expects an impact on its resources and anticipates the need for one additional Assistant Attorney General. The general fund cost for the position is \$115,499 the first year and \$138,599 the second year.

9. Specific Agency or Political Subdivisions Affected: State and local law-enforcement agencies, state and local correctional facilities, local governments, Department of Criminal Justice Services, Office of the Attorney General.

10. Technical Amendment Necessary: No.

11. Other Comments: None.