

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB88

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

2. Patron: Locke

3. Committee: Committee for Courts of Justice

4. Title: Law-enforcement officers & jail officers; various changes to provisions related to decertification.

5. Summary: Makes various changes to the provisions related to decertification of law-enforcement officers and jail officers. The bill provides that the Department of Criminal Justice Services (DCJS), rather than the Criminal Justice Services Board as provided under current law, shall oversee decertification proceedings, including receiving notice of an event requiring decertification from the sheriff, chief of police, or agency administrator or their designee, immediately decertifying a law-enforcement officer or jail officer upon receiving such notice, and initiating a review of the decertification upon request by the decertified officer. The bill specifies that the Department shall initiate such a review of the decertification in accordance with the provisions of the Administrative Process Act. The bill provides that the findings and decision of the Department may be appealed to the Board and that the final administrative decision of the Board may be then appealed and reviewed by a court.

The bill also allows the Department to grant a continuance of any informal fact-finding conference or formal hearing upon motion by the decertified officer or his counsel or the Attorney General for good cause shown. The bill specifies when the Department is permitted or required to continue any informal fact-finding conference or formal hearing under different circumstances involving pending criminal charges or pending appeals. The bill requires an officer to remain decertified during a period of continuance of any informal fact-finding conference or formal hearing for a pending criminal charge unless the Department finds the officer's continued decertification may cause circumstances that constitute a manifest injustice to the officer, in which case the officer's certification may be reinstated during the period of continuance until the conviction becomes final. Current law allows the Board, when an officer's conviction has not become final, to decline to decertify such officer after considering the likelihood of irreparable damage to the officer if such officer is decertified during the pendency of an ultimately successful appeal, the likelihood of injury or damage to the public if the officer is not decertified, and the seriousness of the offense.

Additionally, the bill allows decertification of an officer who is terminated or resigns for an act committed while in the performance of his duties that compromises an officer's credibility, integrity, or honesty or that constitutes exculpatory or impeachment evidence in a criminal case. Current law allows decertification of an officer who is terminated or resigns

for an act committed while in the performance of his duties that compromises an officer's credibility, integrity, honesty, or other characteristics that constitute exculpatory or impeachment evidence in a criminal case. The bill also specifies that the required notification to the Department related to an officer being terminated or resigning (i) for engaging in serious misconduct; (ii) while such officer is the subject of a pending internal investigation involving serious misconduct; or (iii) for an act committed while in the performance of his duties that compromises an officer's credibility, integrity, or honesty or constitutes exculpatory or impeachment evidence in a criminal case shall be within 48 hours of completion of an internal investigation. Under current law, such notification is required to be within 48 hours of the termination or resignation.

The bill also requires the Department to establish standards and procedures for when the Department may grant a petition for reinstatement of certification of a decertified officer. The bill directs the Department to adopt emergency regulations to implement the provisions of the bill.

- 6. Budget Amendment Necessary:** Yes, Item 391.
- 7. Fiscal Impact Estimates:** Preliminary (see Item 8 below).
- 8. Fiscal Implications:** The bill amends § 9.1-102 (powers and duties of the Board and the Department) and requires DCJS to provide for or conduct the investigation related to decertification. Additionally, DCJS would be required to provide for or conduct the investigation related to decertification based on a serious misconduct violation. Currently, the law enforcement agency employing the officer is responsible for conducting the investigation that led to the decertification.

The bill also requires that the agency utilize the Administrative Process Act (APA) procedure in conducting the decertification process. The APA adds additional steps that would require additional agency staff to include legally trained personnel to conduct informal fact-finding hearings when a decertification is challenged by the officer.

If the intent of the legislation is for DCJS to investigate the circumstances that lead to an agency decertifying an officer, DCJS reports that it will need staff to conduct the investigation of the misconduct that might lead to a decertification. Currently, DCJS does not know how many decertification investigations take place in Virginia each year since investigations are handled by each local department and these statistics are not compiled and reported. However, each case would need to have an investigation completed, documented, and a report developed stating the conclusions reached.

DCJS reports that it handled a total of 137 decertification in FY 2023.

To the extent DCJS is required to conduct the investigation for each complaint, the estimated annual personnel cost per investigator is \$101,500 general fund, assuming a \$70,000 annual salary plus benefits. The agency also believes it would need program managers, program coordinators, and APA adjudication specialists. The estimated annual salary including

benefits for a program manager is \$130,500 general fund; \$94,250 general fund annual salary for a coordinator; and \$123,250 general fund annual salary for an APA adjudication specialist. The total number of positions needed would depend on the workload of the agency, which is unknown at this time, though the agency believes it may need up to 27 investigators depending on the number of complaints it may receive annually, as each case would need to have an investigation completed, documented, and a report developed stating the conclusions reached. DCJS reports that these staffing estimates are based on conversations between the agency and law enforcement agencies in the Commonwealth on the number of local investigations and the agency's internal expertise.

DCJS also reports that tracking the investigations and following the APA process will require upgrades to the tracking system used by DCJS to maintain law enforcement training and records. This bill would require a new module to collect and maintain investigative files and information, as well as maintaining records and data from the APA process. DCJC estimates a one-time cost of up to \$400,000 general fund for development of the new module.

Assuming DCJS would be required to investigate each allegation that may lead to decertification, the agency estimates overhead, and costs related to the investigator positions, would be needed, to include general fund support for a state vehicle at \$350 per month, and travel costs consisting of two days on the road per week on average and a per diem rate of \$135 per night per person.

9. Specific Agency or Political Subdivisions Affected: Department of Criminal Justice Services, state and local law enforcement agencies.

10. Technical Amendment Necessary: No.

11. Other Comments: None.