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## OLR Bill Analysis

### sSB 161

#### ***AN ACT CONCERNING THE PROHIBITION AGAINST HIRING POLICE OFFICERS DISMISSED FOR MALFEASANCE OR WHO RESIGNED OR RETIRED WHILE UNDER INVESTIGATION.***

#### **SUMMARY**

Existing law prohibits a law enforcement unit from hiring a police officer who was previously employed by the unit or in another jurisdiction and (1) was dismissed for malfeasance or serious misconduct calling into question his or her fitness to serve as an officer or (2) resigned or retired during an investigation into such conduct. This bill:

1. expressly prohibits the Police Office Standards and Training Council (POST) from certifying these officers;
2. allows POST to hold hearings for units and officers to determine whether a specific hiring or certification denial is improper; and
3. expands the type of actions considered “serious misconduct,” principally to include taking improper or illegal actions that could result in a gross deviation from generally accepted police officer standards and behavior.

Existing law requires a unit, if it knows that such an officer is applying to another unit, to inform POST and the other unit about the officer’s dismissal, resignation, or retirement. By expanding the definition of “serious misconduct,” the bill correspondingly expands when these units must report to POST and other units.

Under existing law and the bill, the hiring, certification, and reporting provisions do not apply to officers exonerated from malfeasance or serious misconduct allegations. Additionally, the bill does not preclude POST from suspending, cancelling, or revoking an officer’s certification

based on its existing statutory authority.

Under the bill, if an officer resigns or retires while his or her unit is investigating whether he or she committed certain malfeasance or other serious misconduct, the unit must (1) complete its investigation, (2) attempt to interview the officer, and (3) provide its investigation file to POST upon request.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2022

## **POLICE OFFICER HIRING AND CERTIFICATION (§ 1)**

### ***Officer Certification***

The bill explicitly prohibits POST from certifying any officer who (1) was dismissed for malfeasance or other serious misconduct, as defined below, or (2) resigned or retired during an investigation for such conduct. Under existing law, unchanged by the bill, “malfeasance” has its common meaning (i.e., a wrongful, unlawful, or dishonest act).

By law, POST enforces professional standards for certifying and decertifying police officers, among other duties. Existing law allows POST to cancel or revoke a police officer’s certification for several actions included in the below definition of serious misconduct, such as fraud, document falsification, or felony convictions (CGS § 7-294d). Additionally, under existing POST policy, a finding by a law enforcement unit that a person was terminated, dismissed, resigned, or retired under the law regarding malfeasance and other serious misconduct (i.e., Section 1 of the bill) is also grounds for suspension or revocation. This policy also requires units to report those findings to POST (POST General Notice 20-09).

### ***POST Hearings***

The bill allows POST to hold a hearing, in accordance with the Uniform Administrative Procedure Act (UAPA), for any (1) law enforcement unit prohibited from hiring a person by the provisions described above and (2) police officer denied certification by the bill. The hearing must be to determine whether the:

1. police officer was dismissed for malfeasance or other serious misconduct,
2. police officer resigned or retired while under investigation for malfeasance or other serious misconduct,
3. police officer was exonerated of each allegation of malfeasance or other serious misconduct, or
4. conduct at issue constituted malfeasance or serious misconduct.

Under existing law, unchanged by the bill, before cancelling or revoking an officer's certification, POST must (1) give the officer notice and an adequate opportunity for a hearing and (2) make a finding of the improper conduct by clear and convincing evidence. Any hearing to suspend, cancel, or revoke a certification must be conducted in accordance with the UAPA, and any certificate holder aggrieved by a POST decision may appeal to court under the UAPA (CGS § 7-294d).

### ***Serious Misconduct***

Under current law, "serious misconduct" means an officer's improper or illegal actions connected with official duties that could cause a miscarriage of justice or discrimination, such as a felony conviction, evidence fabrication, repeated use of excessive force, bribe acceptance, or fraud.

The bill expands the definition of "serious misconduct" to include an officer's improper or illegal actions connected with official duties that could cause a gross deviation from generally accepted police officer standards and behavior. It also expands the type of actions that explicitly constitute serious misconduct to include:

1. evidence falsification;
2. intimidation or harassment causing injury based upon actual or perceived protected class membership, identity, or expression;  
and
3. failure to intervene or stop the use of force by another officer

found to be unjustifiable after a statutory investigation by the Office of the Inspector General (OIG).

Additionally, the bill changes when a police officer's use of force rises to "serious misconduct." Under current law, "serious misconduct" includes repeated use of excessive force. Under the bill, it instead includes the use of physical force found to be unjustifiable after a statutory investigation by OIG. (By law, these OIG investigations are limited to circumstances in which a person dies as a result of an officer's use of force (CGS § 51-277a).)

### **UNIT INVESTIGATIONS INTO OFFICER CONDUCT (§ 2)**

Under the bill, if an officer resigns or retires while his or her unit is investigating whether he or she committed malfeasance or other serious misconduct calling into question his or her fitness to serve as an officer, the unit must complete its investigation.

The bill also requires the unit to attempt to interview the officer as part of its investigation and, if the officer does not respond or refuses to be interviewed, the unit must document the officer's nonresponse or refusal in its investigation file and complete the investigation without interviewing the officer.

Additionally, the bill requires the unit to provide its investigation file to POST when requested by the council for the purposes of the above hearing process.

### **COMMITTEE ACTION**

Public Safety and Security Committee

Joint Favorable Substitute

Yea 18 Nay 5 (03/08/2022)