

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas *As Enrolled: H1/10/01 H2/13/01 H2/15/01*

2 83rd General Assembly

A Bill

3 Regular Session, 2001

HOUSE BILL 1038

4

5 By: Representative Glover

6

7

8

For An Act To Be Entitled

9 AN ACT PERTAINING TO THE QUALIFICATIONS AND
10 PROFESSIONALISM OF LAW ENFORCEMENT OFFICERS; AND FOR
11 OTHER PURPOSES.

12

13

Subtitle

14

15 AN ACT PERTAINING TO THE QUALIFICATIONS
16 AND PROFESSIONALISM OF LAW ENFORCEMENT
17 OFFICERS.

18

19

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20

SECTION 1. (a) The Commission on Law Enforcement Standards and Training shall conduct a decertification hearing after reasonable notice in writing concerning any Arkansas law enforcement officer who the commission has reason to believe has committed:

21

22

23

24

(1) Violations of the Arkansas Law Enforcement Code of Ethics as set forth in Rules and Regulations Manual, Commission on Law Enforcement Standards and Training;

25

26

27

(2) Violations of state or federal law which constitute a pattern of disregard for the law, including but not limited to:

28

29

(A) Criminal attempt, criminal solicitation, or criminal conspiracy, Arkansas Code 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection (a)(2);

30

31

32

(B) Capital murder, Arkansas Code 5-10-101;

33

(C) Murder in the first and second degree, Arkansas Code 5-10-102 and 5-10-103;

34

35

(D) Manslaughter, Arkansas Code § 5-10-104;

36

(E) Negligent homicide, Arkansas Code 5-10-105(a);

- 1 (F) Kidnapping, Arkansas Code 5-11-102;
2 (G) False Imprisonment in the first degree, Arkansas Code
3 5-11-103;
4 (H) Permanent detention or restraining, Arkansas Code 5-
5 11-106;
6 (I) Assault in the first degree, Arkansas Code 5-11-205;
7 (J) Battery, assault, or coercion, Arkansas Code 5-13-201
8 through 208;
9 (K) Coercion, Arkansas Code 5-13-208;
10 (L) Terroristic threatening in the first degree, Arkansas
11 Code 5-13-301;
12 (M) Rape and carnal abuse in the first degree, Arkansas
13 Code 5-14-103 through 5-14-105;
14 (N) Carnal abuse in the third degree, Arkansas Code 5-14-
15 106;
16 (O) Sexual misconduct, Arkansas Code 5-14-107;
17 (P) Sexual abuse in the first degree and second degree,
18 Arkansas Code 5-14-108 and 5-14-109;
19 (Q) Sexual solicitation of a child, Arkansas Code 5-14-110;
20 (R) Public sexual indecency, Arkansas Code 5-14-111;
21 (S) Indecent exposure, Arkansas Code 5-14-112;
22 (T) Violation of a minor in the first degree and second
23 degree, Arkansas Code 5-14-120 and 5-14-121;
24 (U) Incest, Arkansas Code 5-26-202;
25 (V) Domestic battering, Arkansas Code 5-26-303 through 5-
26 26-305 or aggravated assault on a family or household member, Arkansas Code 5-
27 26-306 through 5-26-309;
28 (W) Endangering the welfare of a minor in the first degree,
29 Arkansas Code 5-27-203;
30 (X) Endangering the welfare of a minor in the second
31 degree, Arkansas Code 5-27-204;
32 (Y) Permitting child abuse, Arkansas Code 5-27-221(a)(1)
33 and 5-27-221(a)(3);
34 (Z) Engaging children in sexually explicit conduct for use
35 in visual or print media, transportation of minors for prohibited sexual
36 conduct, or use of a child or consent to use of a child in a sexual

1 performance by producing, directing, or promoting a sexual performance by a
 2 child, Arkansas Code 5-27-303, 5-27-305, 5-27-402, and 5-27-403;

3 (AA) Pandering or possessing visual or print medium
 4 depicting sexually explicit conduct involving a child, Arkansas Code 5-27-304;

5 (BB) Theft of property, Arkansas Code 5-36-103, and theft
 6 by receiving, Arkansas Code 5-36-106;

7 (CC) The manufacture, delivery, or possession with intent
 8 to manufacture or deliver any controlled substance, Arkansas Code 5-64-401;

9 (DD) The use, or possession with intent to use drug
 10 paraphernalia to otherwise introduce into the human body a controlled
 11 substance, or to possess with intent to deliver, or manufacture with intent to
 12 deliver, drug paraphernalia, Arkansas Code 5-64-403; or

13 (EE) Distributing to minors, Arkansas Code 5-64-406; and

14 (3) Any offense which, in the opinion of the commission, would
 15 impair the ability of the law enforcement officer to carry out the law
 16 enforcement officer's assigned duties.

17 (b) Every law enforcement agency shall report to the commission, within
 18 ten (10) working days, any findings of misconduct, violations of rules and
 19 regulations, or violations of law committed by a law enforcement officer that
 20 results in suspension, demotion, or termination, and when a law enforcement
 21 officer leaves their employ for any reason.

22 (c) Notice by certified letter from the commission to a law enforcement
 23 officer, agency head, and mayor or city manager, that the officer is to be
 24 subjected to a decertification hearing which will immediately suspend the law
 25 enforcement status of the officer, subject to the outcome of the hearing. Any
 26 official action taken by the officer after decertification will be invalid.

27 (d) A law enforcement officer granted a disability retirement shall be
 28 automatically decertified on the effective date of the officer's disability
 29 retirement, if such disability prevents functioning as a law enforcement
 30 officer.

31 (e) Applicants to a position in a law enforcement agency which requires
 32 certification whose past includes any misconduct which constitute a pattern of
 33 disregard for the law shall be ineligible to be certified as a law enforcement
 34 officer by the commission. Misconduct shall include, but not be limited to,
 35 those offenses in subdivision (a)(2) of this section. Any applicant who
 36 knowingly falsifies information shall immediately forfeit the right to be

1 certified as a law enforcement officer.

2 (f) The following minimum employment background elements must be
3 verified and records of compliance must be maintained by the employing law
4 enforcement agency on every officer employed by a law enforcement agency which
5 shall establish that the officer:

6 (1) Is a citizen of the United States;

7 (2) Is at least 21 years of age;

8 (3) Has been fingerprinted and a search initiated of State and
9 national (FBI) fingerprint files to disclose any criminal record;

10 (4) Is free of a pattern of criminal activity, "pattern" meaning
11 a reliable sample of traits, acts, tendencies, or other observable
12 characteristics of a person;

13 (5) Is of good character;

14 (6) Is a high school graduate or has passed the General Education
15 Development (GED) test;

16 (7) Meets physical requirements as determined by examination by a
17 licensed physician, licensed advanced practice nurse, or physician's
18 assistant;

19 (8) Has been examined by an individual licensed to practice
20 psychiatry or psychology and qualified to perform such evaluations in the
21 State of Arkansas, who after examination finds the officer to be competent and
22 recommends the agency hire the individual;

23 (9) Possesses a valid drivers license;

24 (10) Has furnished references;

25 (11) Has furnished names of organizations in which the officer
26 held membership, social and fraternal;

27 (12) Has furnished neighborhood addresses for past five years;

28 (13) Has provided the name and addresses of all employers for the
29 past five years;

30 (14) Has provided a release for records regarding a credit
31 background check;

32 (15) Has provided information for a background check of each
33 state of residence for credit, criminal and motor vehicle records; and

34 (16) Has provided information concerning military service;

35 (g) If a law enforcement agency fails to furnish to the commission,
36 within ten (10) days of hire, the Initial Employment Report, Form F-1, on the

1 law enforcement officer, the officer will be considered ineligible to take any
2 official action as a law enforcement officer, and any official action taken by
3 the officer will be considered invalid. If a law enforcement agency upon
4 audit by the commission, fails to produce proper documentation and records as
5 required by the commission on any law enforcement officer, then the officer
6 whose records are incomplete shall be suspended from his duties as a law
7 enforcement officer for up to thirty (30) days, and shall take no official
8 action as a law enforcement officer during the time of the suspension. If
9 after thirty (30) days the officer's records remain incomplete, then the
10 officer shall be automatically decertified.

11 (h) All certified law enforcement officers shall be
12 required to complete a minimum of twenty-four (24) hours of advanced training
13 per year beginning January 1, 2002, based on a minimum of twenty-four (24)
14 hours of advanced training per year for the first full calendar year after the
15 effective date of this act, based on standards and curriculum to be developed
16 by the commission. These hours may be completed within one (1) year. The
17 minimum number of advanced training hours shall be increased by the commission
18 thereafter until the year 2005 in which a minimum of forty (40) hours of
19 advanced training shall be required per year by a qualified instructor. Each
20 law enforcement agency will be responsible for maintaining accurate records
21 for annual advanced officer training. These records will be subject to review
22 audits by the commission.

23 (i) Every chief of police or agency head, hired after the effective
24 date of this act, shall attend an eighty (80) hour certification course within
25 six (6) months of being appointed. The commission will develop standards for
26 this certification. The curriculum for this certification will be developed
27 in accordance with Arkansas Code 12-9-505. Failure to comply with
28 certification requirements will result in a suspension of their law
29 enforcement powers and authority for a period lasting until such certification
30 is attained.

31 (j) Every elected law enforcement official who is paid for their
32 elected office, and who has authority to hire subordinates to fulfill the
33 responsibilities of office, may be required to attend an eighty (80) hour law
34 enforcement management program to be completed within six (6) months of taking
35 office. The Commission on Law Enforcement Standards and Training will develop
36 standards for this curriculum. The curriculum for this certification will be

1 developed in accordance with Arkansas Code 12-9-505.

2 (k) Other elected law enforcement officials who by nature of their
 3 office may function as a law enforcement officer shall meet minimum standards
 4 for training before fulfilling law enforcement responsibilities, and shall be
 5 required to attend training as established by the Commission on Law
 6 Enforcement Standards and Training. If any official does not comply with these
 7 requirements, the official's law enforcement actions shall be limited by the
 8 commission.

9
 10 SECTION 2. Arkansas Code 12-9-108(a) is amended to read as follows:

11 (a) Actions taken by law enforcement officers who do not meet all of
 12 the standards and qualifications set forth in this subchapter or made by the
 13 Arkansas Commission on Law Enforcement Standards and Training shall not be
 14 held invalid merely because of the failure to meet the standards and
 15 qualifications take any official action as a law enforcement officer, and any
 16 official action taken shall be invalid.

17
 18 SECTION 3. Arkansas Code 16-93-303 is amended to read as follows:

19 16-93-303. Procedure.

20 (a)(1)(A) Whenever an accused enters a plea of guilty or nolo
 21 contendere prior to an adjudication of guilt, the judge of the circuit or
 22 municipal court, criminal or traffic division, in the case of a defendant who
 23 has not been previously convicted of a felony, without entering a judgment of
 24 guilt and with the consent of the defendant, may defer further proceedings and
 25 place the defendant on probation for a period of not less than one (1) year,
 26 under such terms and conditions as may be set by the court.

27 (B) Provided, however, that no person who pleads guilty or
 28 nolo contendere to, or is found guilty of, a sexual offense as defined by ~~§ 5-~~
 29 ~~5-101 et seq~~ §§ 5-14-101 through 5-14-123 in which the victim was under the
 30 age of eighteen (18) years shall be eligible for expungement of the record
 31 under this subchapter.

32 (C) Any person who commits a felony offense, and who uses
 33 the expungement provisions of this section, shall be ineligible to be
 34 certified as a law enforcement officer.

35 (2) Upon violation of a term or condition, the court may enter an
 36 adjudication of guilt and proceed as otherwise provided.

