**South Carolina General Assembly**

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**STATUS INFORMATION**

General Bill

Sponsors: Reps. McKnight, Robinson, Thigpen, Hosey, Henegan and J.L. Johnson

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Introduced in the House on January 12, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Law Enforcement Integrity Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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12/9/2020 House Referred to Committee on **Judiciary**

1/12/2021 House Introduced and read first time ([House Journal‑page 42](file:///h:\hj\20210112.docx))

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1/14/2021 House Member(s) request name added as sponsor: Henegan, J.L.Johnson

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\3049_20201209.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 2 TO TITLE 23 SO AS TO ENACT THE “LAW ENFORCEMENT INTEGRITY ACT”, TO REQUIRE ALL LAW ENFORCEMENT AGENCIES PROVIDE THEIR OFFICERS BODY‑WORN CAMERAS AND PROVIDE WHEN THEY OR DASH CAMERAS MUST BE ACTIVATED, TO PROVIDE THE CIRCUMSTANCES WHEN FAILURE TO ACTIVATE A BODY‑WORN OR DASH CAMERA IS UNLAWFUL, TO PROVIDE FOR THE RETENTION AND RELEASE OF BODY‑WORN CAMERA RECORDINGS, TO PROVIDE THE STATE LAW ENFORCEMENT DIVISION SHALL ISSUE AN ANNUAL REPORT CONTAINING INFORMATION REGARDING LAW ENFORCEMENT OFFICER CONDUCT, TO PROVIDE THE TYPES OF FORCE A LAW ENFORCEMENT AGENCY MAY NOT USE IN RESPONSE TO A PROTEST OR DEMONSTRATION, TO PROVIDE PENALTIES FOR UNLAWFUL LAW ENFORCEMENT OFFICER CONDUCT, TO PROVIDE CIRCUMSTANCES WHEN PHYSICAL OR DEADLY FORCE MAY BE USED, TO PROVIDE CIRCUMSTANCES WHEN A LAW ENFORCEMENT OFFICER SHALL PREVENT OR STOP ANOTHER LAW ENFORCEMENT OFFICER FROM USING PHYSICAL FORCE, TO PROVIDE WHEN A LAW ENFORCEMENT OFFICER MAY MAKE CONTACT WITH A PERSON AND FILE A REPORT OF THE CONTACT, AND TO PROVIDE THE CIRCUMSTANCES WHEN A LAW ENFORCEMENT OFFICER SHALL PROVIDE HIS BUSINESS CARD TO A DETAINEE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 23 of the 1976 Code is amended by adding:

“CHAPTER 2

LAW ENFORCEMENT INTEGRITY ACT

Section 23‑2‑10. This chapter may be cited as the “Law Enforcement Integrity Act”.

Section 23‑2‑15. As contained in this chapter:

(1) ‘Contact’ means an interaction with an individual, whether or not the person is in a motor vehicle, initiated by a law enforcement officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law. ‘Contact’ does not include routine interactions with the public at the point of entry or exit from a controlled area.

(2) ‘Demographic information’ means race, ethnicity, sex, and approximate age.

(3) ‘Law enforcement officer’ means an officer, deputy, employee, or agent of a law enforcement agency, and a peace officer.

(4) ‘Physical force’ means the application of physical techniques or tactics, chemical agents, or weapons to another person.

(5) ‘Serious bodily injury’ has the same meaning as contained in Section 23‑31‑400(2).

(6) ‘Tamper’ means to intentionally damage, disable, dislodge, or obstruct the sight or sound or impair functionality of the body‑worn camera or to intentionally damage, delete, or fail to upload some or all portions of the video and audio recorded by a body‑worn camera.

Section 23‑2‑20. (A) By July 1, 2023, all local law enforcement agencies in the State shall provide body‑worn cameras for each law enforcement officer of the law enforcement agency who interacts with members of the public. Law enforcement agencies may seek funding pursuant to Section 23‑1‑240(E)(1).

(B) A law enforcement officer shall wear and activate a body‑worn camera or dash camera, if the law enforcement officer’s vehicle is equipped with a dash camera, when responding to a call for service or during any interaction with the public initiated by the law enforcement officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law.

(C) A law enforcement officer may turn off a body‑worn camera to avoid recording personal information that is not case related; when working on an unrelated assignment; when there is a long break in the incident or contact that is not related to the initial incident; and in administrative, tactical, and management discussions.

(D) A law enforcement officer is not required to wear or activate a body‑worn camera if the officer is working undercover.

(E) The provisions of this section do not apply to a jail or a local detention facility if the jail or local detention facility has video cameras. However, this section applies to jail and local detention facility law enforcement officers when performing a task that requires an anticipated use of force, including cell extractions and restraint chairs. The provisions of this section also do not apply to the civilian or administrative staff of a law enforcement agency and officers working in a courtroom.

(F) If a law enforcement officer fails to activate a body‑worn camera or dash camera as required by this section or tampers with body‑worn or dash‑camera footage or operation when required to activate the camera, there is a permissive inference in any investigation or legal proceeding, excluding criminal proceedings against the law enforcement officer, that the missing footage would have reflected misconduct by the officer. If the officer fails to activate or reactivate his body‑worn camera as required by this section or tampers with body‑worn or dash camera footage or operation when required to activate the camera, any statements sought to be introduced in a prosecution through the officer related to the incident that were not recorded due to the officer’s failure to activate or reactivate the body‑worn camera as required by this section or if the statement was not recorded by other means, creates a rebuttable presumption of inadmissibility. Notwithstanding any other provision of law, this section does not apply if the body‑worn camera was not activated due to a malfunction of the camera and the officer was not aware of the malfunction, or was unable to rectify it, prior to the incident, provided the law enforcement agency’s documentation shows the law enforcement officer checked the functionality of the body‑worn camera at the beginning of his shift.

(G) In addition to any criminal liability and penalty under the law, if a court finds that a law enforcement officer intentionally failed to activate a body‑worn camera or dash camera or tampered with any body‑worn camera or dash camera, except as permitted in this section, the law enforcement officer’s employer shall impose discipline up to and including termination.

(H) In addition to any criminal liability and penalty under the law, if a court finds that a law enforcement officer intentionally failed to activate a body‑worn camera or dash camera or tampered with a body‑worn or dash camera, except as permitted in this section, with the intent to conceal unlawful or inappropriate actions or obstruct justice, the Law Enforcement Training Council shall suspend a law enforcement officer’s certification for a period of not less than one year and the suspension only may be lifted within the period of the suspension if the officer is exonerated by a court.

(I) In addition to any criminal liability and penalty under the law, if a court finds that a law enforcement officer intentionally failed to activate a body‑worn camera or dash camera or tampered with any body‑worn or dash camera, except as permitted in this section, with the intent to conceal unlawful or inappropriate actions, or obstruct justice, in an incident resulting in a civilian death, the Law Enforcement Training Council shall permanently revoke the law enforcement officer’s certification and the revocation only may be overturned if the officer is exonerated by a court.

(J) A law enforcement agency shall establish and follow a retention schedule for body‑worn camera recordings.

(K) For all incidents in which there is a complaint of law enforcement officer misconduct by another law enforcement officer, a civilian, or nonprofit organization, through notice to the law enforcement agency involved in the alleged misconduct, the law enforcement agency shall release all unedited video and audio recordings of the incident, including those from body‑worn cameras, dash cameras, or otherwise collected through investigation, to the public within twenty‑one days after the local law enforcement agency received the complaint of misconduct.

(L) All video and audio recordings depicting a death must be provided upon request to the victim’s spouse, parent, legal guardian, child, sibling, grandparent, grandchild, or other lawful representative, and the person must be notified of his right to receive and review the recording at least seventy‑two hours before public disclosure.

(M) Any video that raises substantial privacy concerns for criminal defendants, victims, witnesses, juveniles, or informants, including video depicting nudity; a sexual assault; a medical emergency; private medical information; a mental health crisis; a victim interview; a minor, including any images or information that might undermine the requirement to keep certain juvenile records confidential; any personal information other than the name of any person not arrested, cited, charged, or issued a written warning, including a government‑issued identification number, date of birth, address, or financial information; significantly explicit and gruesome bodily injury, unless the injury was caused by a law enforcement officer; or the interior of a home or treatment facility, must be redacted or blurred to protect the substantial privacy interest while still allowing public release. Unredacted footage shall not be released without the written authorization of the victim or, if the victim is deceased or incapacitated, the written authorization of the victim’s next of kin.

(N) If redaction or blurring is insufficient to protect the substantial privacy interest, the law enforcement agency shall, upon request, release the video to the victim or, if the victim is deceased or incapacitated, to the victim’s spouse, parent, legal guardian, child, sibling, grandparent, grandchild, or other lawful representative within twenty days after receipt of the complaint of misconduct. In cases in which the recording is not released to the public pursuant to this section, the law enforcement agency shall notify the person whose privacy interest is implicated, if contact information is known, within twenty days after receipt of the complaint of misconduct, and inform the person of his right to waive the privacy interest.

(O) A witness, victim, or criminal defendant may waive in writing the individual privacy interest that may be implicated by public release. Upon receipt of a written waiver of the applicable privacy interest, accompanied by a request for release, the law enforcement agency may not redact or withhold release to protect that privacy interest.

(P) Any video that would substantially interfere with or jeopardize an active or ongoing investigation may be withheld from the public. However, the video must be released no later than forty‑five days from the date of the allegation of misconduct. When release of a video is delayed in reliance on this section, the prosecuting attorney shall prepare a written explanation of the interference or jeopardy that justifies the delayed release, contemporaneous with the refusal to release the video. Upon release of the video, the prosecuting attorney shall release the written explanation to the public.

(Q) If criminal charges have been filed against a party to the incident, that party must file any constitutional objection to release of the recording in the pending criminal case before the twenty‑one‑day period expires. Only in cases in which there is a pending criminal investigation or prosecution of a party to the incident, the twenty‑one‑day period shall begin from the date of appointment of counsel, the filing of an entry of appearance by counsel, or the election to proceed pro se by the defendant in the criminal prosecution made on the record before a judge. If the defendant elects to proceed pro se in the criminal case, the court shall advise the defendant of the twenty‑one‑day deadline for the defendant to file any constitutional objection to release of the recording in the pending criminal case as part of the court’s advisement. The court shall hold a hearing on any objection no later than seven days after it is filed and issue a ruling no later than three days after the hearing.

Section 23‑2‑30. (A) Beginning July 1, 2023, the State Law Enforcement Division (SLED) shall create an annual report including all information that is reported to the division pursuant to section (B), aggregated and broken down by the law enforcement agency that employs law enforcement officers, along with the underlying data.

(B) Beginning January 1, 2023, each law enforcement agency that employs law enforcement officers shall report to SLED:

(1) a use of force by its law enforcement officers that results in death or serious bodily injury, including:

(a) the date, time, and location of the use of force;

(b) the perceived demographic information of the person contacted, provided that the identification of these characteristics is based on the observation and perception of the law enforcement officer making the contact and other available data;

(c) the names of all law enforcement officers who were at the scene, identified by whether the law enforcement officer was involved in the use of force or not. However, the identity of other law enforcement officers at the scene not directly involved in the use of force must be identified by the officer’s identification number unless the law enforcement officer is charged criminally or is a defendant to a civil suit as a result arising from the use of force;

(d) the type of force used, the severity and nature of the injury, whether the law enforcement officer suffered physical injury, and the severity of the officer’s injury;

(e) whether the law enforcement officer was on duty at the time of the use of force;

(f) whether a law enforcement officer unholstered a weapon during the incident;

(g) whether a law enforcement officer discharged a firearm during the incident;

(h) whether the use of force resulted in a law enforcement agency investigation and the result of the investigation; and

(i) whether the use of force resulted in a citizen complaint and the resolution of that complaint;

(2) all instances when a law enforcement officer resigned while under investigation for violating department policy;

(3) all data relating to contacts conducted by its law enforcement officers, including:

(a) the perceived demographic information of the person contacted, provided that the identification of these characteristics is based on the observation and perception of the law enforcement officer making the contact and other available data;

(b) whether the contact was a traffic stop;

(c) the time, date, and location of the contact;

(d) the duration of the contact;

(e) the reason for the contact;

(f) the suspected crime;

(g) the result of the contact, to include:

(i) no action, warning, citation, property seizure, or arrest;

(ii) if a warning or citation was issued, the warning provided or violation cited;

(iii) if an arrest was made, the offense charged;

(iv) if the contact was a traffic stop, the information collected, which is limited to the driver;

(h) the actions taken by the law enforcement officer during the contact, including but not limited to whether:

(i) the law enforcement officer asked for consent to search the person, and, if so, whether consent was provided;

(ii) the law enforcement officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any;

(iii) the law enforcement officer seized any property and, if so, the type of property that was seized and the basis for seizing the property;

(iv) a law enforcement officer unholstered a weapon during the contact; and

(v) a law enforcement officer discharged a firearm during the contact;

(4) all instances of unannounced entry into a residence, with or without a warrant, including:

(a) the date, time, and location of the use of unannounced entry;

(b) the perceived demographic information of the subject of the unannounced entry, provided that the identification of these characteristics is based on the observation and perception of the law enforcement officer making the entry and other available data;

(c) whether a law enforcement officer unholstered a weapon during the unannounced entry; and

(d) whether a law enforcement officer discharged a firearm during the unannounced entry.

(C) Law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of the subject of the use of force, the victim of official misconduct, or persons contacted, searched, or subjected to a property seizure. Notwithstanding any provision of law to the contrary, the data reported pursuant to this section is available to the public pursuant to subsection (D).

(D) State Law Enforcement Division shall maintain a statewide database with data collected pursuant to this section, in a searchable format, and publish the database on its website.

(E) A law enforcement agency that fails to meet its reporting requirements pursuant to this section is subject to the suspension of its funding by its appropriating authority.

Section 23‑2‑40. Notwithstanding any provision of law, if a law enforcement officer is convicted of a crime involving the unlawful use or threatened use of physical force, a crime involving the failure to intervene in the use of unlawful force, is found civilly liable for the use of unlawful physical force, or is found civilly liable for failure to intervene in the use of unlawful force, the Law Enforcement Training Council shall permanently revoke the officer’s certification. The Law Enforcement Training Council shall not reinstate the officer’s certification or grant new certification to the officer unless the officer is exonerated by a court. The Law Enforcement Training Council shall record each decertified officer in the database created pursuant to Section 23‑2‑30(D).

Section 23‑2‑50. In response to a protest or demonstration, a law enforcement agency and any person acting on behalf of the law enforcement agency shall not:

(1) discharge kinetic impact projectiles and all other non‑ or less‑lethal projectiles in a manner that targets a person’s head, pelvis, or back;

(2) discharge kinetic impact projectiles indiscriminately into a crowd; or

(3) use chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to ensure the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order.

Section 23‑2‑60. (A) A law enforcement officer, who subjects or causes to be subjected, including failing to intervene, any other person to the deprivation of any individual rights that create binding obligations on government actors secured by law, is liable to the injured party for legal or equitable relief or any other appropriate relief.

(B) Statutory immunities and statutory limitations on liability, damages, or attorney fees do not apply to claims brought pursuant to this section. Qualified immunity is not a defense to liability pursuant to this section.

(C) In any action brought pursuant to this section, a court shall award reasonable attorney fees and costs to a prevailing plaintiff. In actions for injunctive relief, a court shall deem a plaintiff to have prevailed if the plaintiff’s suit was a substantial factor or significant catalyst in obtaining the results sought by the litigation. When a judgment is entered in favor of a defendant, the court may award reasonable costs and attorney fees to the defendant for defending any claims the court finds frivolous.

(D) Notwithstanding any other provision of law, a law enforcement officer’s employer shall indemnify its law enforcement officers for any liability incurred by the law enforcement officer and for any judgment or settlement entered against the law enforcement officer for claims arising pursuant to this section. However, if the law enforcement officer’s employer determines the officer did not act upon a good faith and reasonable belief that the action was lawful, then the law enforcement officer is personally liable and shall not be indemnified by the law enforcement officer’s employer for five percent of the judgment or settlement or twenty‑five thousand dollars, whichever is less. Notwithstanding any provision of this section to the contrary, if the law enforcement officer’s portion of the judgment is uncollectible from the law enforcement officer, the law enforcement officer’s employer or insurance shall satisfy the full amount of the judgment or settlement. A public entity does not have to indemnify a law enforcement officer if the law enforcement officer was convicted of a criminal violation for the conduct from which the claim arises.

(E) A civil action pursuant to this section must be commenced within two years after the cause of action accrues.

Section 23‑2‑70. (A) Law enforcement officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A law enforcement officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the officer or another person.

(B) When physical force is used, a law enforcement officer shall:

(1) not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

(2) use only a degree of force consistent with the minimization of injury to others;

(3) ensure that assistance and medical aid are rendered to injured or affected persons as soon as practicable; and

(4) ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(C) A law enforcement officer is prohibited from using a chokehold upon another person. For the purposes of this subsection, ‘chokehold’ means a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes, but is not limited to, any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air. ‘Chokehold’ also means applying pressure to a person’s neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

(D) A law enforcement officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

(1) the arrest is for a felony involving conduct including the use or threatened use of deadly physical force;

(2) the suspect poses an immediate threat to the law enforcement officer or another person; and

(3) the force employed does not create a substantial risk of injury to other persons.

(E) A law enforcement officer shall identify himself as a law enforcement officer and give a clear verbal warning of his intent to use a firearm or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officer at risk of injury, or would create a risk of death or injury to other persons.

(F) Notwithstanding any other provision in this section, a law enforcement officer is justified in using deadly force if the law enforcement officer has an objectively reasonable belief that a lesser degree of force is inadequate and the officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

Section 23‑2‑80. (A) A law enforcement officer shall intervene to prevent or stop another law enforcement officer from using physical force that exceeds the degree of force permitted, if any, by Section 23‑2‑70, in pursuance of the other officer’s law enforcement duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control, without regard for chain of command.

(B) A law enforcement officer who intervenes as required by subsection (A) shall report the intervention to his immediate supervisor. At a minimum, the report must include the date, time, and place of the occurrence; the identity, if known, and description of the participants; and a description of the intervention actions taken. This report must be made in writing within ten days of the occurrence of the use of force and must be appended to all other reports of the incident.

(C) A member of a law enforcement agency shall not discipline or retaliate against a law enforcement officer for intervening as required by subsection (B), for reporting illegal conduct, or for failing to follow what the officer reasonably believes is an illegal directive.

(D) A law enforcement officer who fails to intervene to prevent the use of unlawful force as prescribed in this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year.

(E) When the prosecuting attorney charges a law enforcement officer with an offense related to and based upon the use of excessive force, but does not file charges against another law enforcement officer who was at the scene during the use of force, the prosecuting attorney shall prepare a written report explaining the prosecuting attorney’s basis for the decision not to charge another law enforcement officer with criminal conduct and shall disclose the report to the public. However, if disclosure of the report would substantially interfere with or jeopardize an ongoing criminal investigation, the prosecuting attorney may delay public disclosure for up to forty‑five days. The prosecuting attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request. Nothing in this section is intended to prohibit or discourage criminal prosecution of an officer who failed to intervene for conduct in which the facts support a criminal charge, including under a complicity theory, or for an inchoate offense.

Section 23‑2‑90. (A) A law enforcement officer has a legal basis for making a contact, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law. After making a contact, a law enforcement officer, shall report to his employing agency:

(1) the perceived demographic information of the person contacted, provided that the identification of these characteristics is based on the observation and perception of the law enforcement officer making the contact and other available data;

(2) whether the contact was a traffic stop;

(3) the time, date, and location of the contact;

(4) the duration of the contact;

(5) the reason for the contact;

(6) the suspected crime;

(7) the result of the contact, to include:

(a) no action, warning, citation, property seizure, or arrest;

(b) if a warning or citation was issued, the warning provided or violation cited;

(c) if an arrest was made, the offense charged;

(d) if the contact was a traffic stop, the information collected, which is limited to the driver;

(8) the actions taken by the law enforcement officer during the contact, including but not limited to whether:

(a) the law enforcement officer asked for consent to search the person, vehicle, or other property, and, if so, whether consent was provided;

(b) the law enforcement officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered;

(c) the law enforcement officer seized any property, and, if so, the type of property that was seized and the basis for seizing the property;

(d) a law enforcement officer unholstered a weapon during the contact; and

(e) a law enforcement officer discharged a firearm during the contact.

(B) A law enforcement officer shall provide, without being asked, his business card to any person whom the officer has detained in a traffic stop, but has not cited or arrested. His business card must include identifying information about the officer including, but not limited to, the officer’s name, division, and badge or other identification number; a telephone number that may be used, if necessary, to report any comments, positive or negative, regarding the traffic stop; and information about how to file a complaint related to the contact. The identity of the reporting person and the report of any comments that constitute a complaint initially must be kept confidential by the receiving law enforcement agency. The receiving law enforcement agency is permitted to obtain identifying information regarding the complaint to allow initial processing of the complaint. If it becomes necessary for the further processing of the complaint for the complainant to disclose the complainant’s identity, the complainant shall do so or, at the option of the receiving law enforcement agency, the complaint may be dismissed.”

SECTION 2. This act takes effect upon approval by the Governor.

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