**South Carolina General Assembly**

124th Session, 2021-2022

**A218, R246, H3050**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. D.C. Moss, McGarry, Wooten, Hixon, Erickson and Bradley

Document Path: l:\council\bills\gt\5932cm21.docx

Introduced in the House on January 12, 2021

Introduced in the Senate on May 13, 2021

Last Amended on May 3, 2022

Passed by the General Assembly on May 12, 2022

Governor's Action: May 23, 2022, Signed

Summary: Law enforcement officers, certification

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 House Prefiled

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

1/12/2021 House Introduced and read first time ([House Journal‑page 50](file:///h:\hj\20210112.docx))

1/12/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 50](file:///h:\hj\20210112.docx))

2/9/2021 House Member(s) request name added as sponsor: McGarry

4/14/2021 House Member(s) request name added as sponsor: Wooten, Hixon

4/21/2021 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 15](file:///h:\hj\20210421.docx))

4/22/2021 Scrivener's error corrected

4/27/2021 House Debate adjourned ([House Journal‑page 93](file:///h:\hj\20210427.docx))

4/27/2021 House Member(s) request name added as sponsor: Erickson, Bradley

4/28/2021 House Amended ([House Journal‑page 12](file:///h:\hj\20210428.docx))

4/28/2021 House Requests for debate‑Rep(s).  Pope, Cobb‑Hunter, Simrill, Ott, Blackwell, Taylor, Caskey, McGarry, Bustos, Cogswell, Bennet, Willis, B. Cox, Hiott, Allison, Magnuson, King, Henderson‑Myers, JA Moore, Brawley, J.L. Johnson, Hosey, Cluburn, Govan, Henegan, Kirby, Herbkersman, Bailey, Hewitt, Garvin, Alexander, Oremus, R. Williams, Bamberg, McCravy, Jefferson, Sandifer, M. Smith, Wheeler, McGinnis, Hardee, West, Weeks, Hyde, Bruyant, Daning, Gilliam and Dillard ([House Journal‑page 12](file:///h:\hj\20210428.docx))

5/5/2021 House Debate adjourned until Thur., 5‑6‑21 ([House Journal‑page 32](file:///h:\hj\20210505.docx))

5/11/2021 House Debate adjourned until Wed., 5‑12‑21 ([House Journal‑page 56](file:///h:\hj\20210511.docx))

5/12/2021 House Amended ([House Journal‑page 44](file:///h:\hj\20210512.docx))

5/12/2021 House Read second time ([House Journal‑page 44](file:///h:\hj\20210512.docx))

5/12/2021 House Roll call Yeas‑100 Nays‑13 ([House Journal‑page 51](file:///h:\hj\20210512.docx))

5/13/2021 House Read third time and sent to Senate ([House Journal‑page 28](file:///h:\hj\20210513.docx))

5/13/2021 Senate Introduced and read first time ([Senate Journal‑page 6](file:///h:\sj\20210513.docx))

5/13/2021 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 6](file:///h:\sj\20210513.docx))

5/13/2021 Scrivener's error corrected

7/16/2021 Senate Referred to Subcommittee: Senn (ch), Malloy, Kimpson, Matthews, Adams, Garrett, Gustafson

4/20/2022 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 12](file:///h:\sj\20220420.docx))

5/3/2022 Senate Committee Amendment Amended and Adopted ([Senate Journal‑page 24](file:///h:\sj\20220503.docx))

5/4/2022 Scrivener's error corrected

5/4/2022 Senate Read second time ([Senate Journal‑page 32](file:///h:\sj\20220504.docx))

5/4/2022 Senate Roll call Ayes‑41 Nays‑0 ([Senate Journal‑page 32](file:///h:\sj\20220504.docx))

5/5/2022 Senate Read third time and returned to House with amendments ([Senate Journal‑page 15](file:///h:\sj\20220505.docx))

5/11/2022 House Debate adjourned ([House Journal‑page 75](file:///h:\hj\20220511.docx))

5/12/2022 House Concurred in Senate amendment and enrolled ([House Journal‑page 13](file:///h:\hj\20220512.docx))

5/12/2022 House Roll call Yeas‑103 Nays‑4 ([House Journal‑page 18](file:///h:\hj\20220512.docx))

5/18/2022 Ratified R 246

5/23/2022 Signed By Governor

6/1/2022 Effective date See Act for Effective Date

6/1/2022 Act No.  218

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**VERSIONS OF THIS BILL**

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[5/3/2022](file:///p:\pprever\2021-22\3050_20220503.docx)

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(A218, R246, H3050)

**AN ACT TO AMEND SECTION 23‑23‑40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CERTIFICATION OF A LAW ENFORCEMENT OFFICER EMPLOYED OR APPOINTED BY A PUBLIC LAW ENFORCEMENT AGENCY, SO AS TO PROVIDE THIS PROVISION APPLIES TO LAW ENFORCEMENT OFFICERS EMPLOYED OR APPOINTED AFTER JULY 1, 2022, TO PROVIDE NONCERTIFIED LAW ENFORCEMENT OFFICERS SHALL ONLY PERFORM DUTIES AS LAW ENFORCEMENT OFFICERS WHILE ACCOMPANIED BY CERTIFIED LAW ENFORCEMENT OFFICERS, AND TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 23‑23‑150, RELATING TO THE ADJUDICATION OF ALLEGATIONS OF MISCONDUCT BY LAW ENFORCEMENT OFFICERS, SO AS TO DEFINE THE DEFINITION OF THE TERM “MISCONDUCT”, TO REVISE THE CRITERIA A SHERIFF OR CHIEF EXECUTIVE OFFICER OF A LAW ENFORCEMENT AGENCY OR DEPARTMENT MUST USE WHEN FILING A REPORT OF MISCONDUCT AGAINST A LAW ENFORCEMENT OFFICER, TO PROVIDE THE PROCEDURE FOR PROSECUTING INCIDENCES OF MISCONDUCT, AND TO PROVIDE FOR THE IMPOSITION OF CIVIL FINES AGAINST AGENCIES THAT FAIL TO COMPLY WITH THIS SECTION; BY ADDING SECTION 23‑1‑250 SO AS TO PROVIDE FOR THE LAWFUL USE OF CHOKEHOLDS OR CAROTID HOLDS, TO PROVIDE WILFUL USE OF EXCESSIVE FORCE MAY BE CONSIDERED MISCONDUCT BY A LAW ENFORCEMENT OFFICER AND SUBJECT TO DISCIPLINARY ACTION, AND TO PROVIDE FOR THE DEVELOPMENT OF CURRICULA AND STANDARDS TO ADDRESS JUSTIFIABLE USE OF CHOKEHOLDS AND CAROTID HOLDS; BY ADDING SECTION 23‑23‑85 SO AS TO PROVIDE FOR ESTABLISHMENT OF MINIMUM STANDARDS REQUIRED OF LAW ENFORCEMENT AGENCIES BY THE LAW ENFORCEMENT TRAINING COUNCIL, AND PROVIDE THE COUNCIL WITH THE AUTHORITY TO TAKE PUNITIVE ACTION AGAINST LAW ENFORCEMENT AGENCIES THAT FAIL TO COMPLY WITH STANDARDS ISSUED PURSUANT TO THIS SECTION; BY ADDING SECTION 23‑23‑160 SO AS TO ESTABLISH A COMPLIANCE DIVISION WITHIN THE LAW ENFORCEMENT TRAINING COUNCIL AND PROVIDE ITS RESPONSIBILITIES; TO AMEND SECTION 23‑23‑100, RELATING TO COMPLIANCE WITH PROVISIONS ENFORCED BY THE LAW ENFORCEMENT TRAINING COUNCIL, SO AS TO REVISE THIS PROVISION; TO AMEND SECTION 23‑23‑60, RELATING TO THE ISSUANCE OF CERTIFICATES OF COMPLIANCE BY THE LAW ENFORCEMENT TRAINING COUNCIL, SO AS TO ADD ADDITIONAL EVIDENCES A LAW ENFORCEMENT AGENCY MUST SUBMIT TO THE COUNCIL ABOUT A CANDIDATE BEING CONSIDERED FOR CERTIFICATION; AND TO AMEND SECTION 16‑23‑20, AS AMENDED, RELATING TO THE UNLAWFUL CARRYING OF HANDGUNS, SO AS TO ALLOW RETIRED COMMISSIONED LAW ENFORCEMENT OFFICERS TO CARRY THEM ABOUT THEIR PERSONS.**

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

**Law enforcement officer certification**

SECTION 1. Section 23‑23‑40 of the 1976 Code is amended to read:

“Section 23‑23‑40. (A) No law enforcement officer employed or appointed on or after July 1, 2022, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council; provided, that if any public law enforcement agency employs or appoints as a law enforcement officer a person who is not certified, the person shall not perform any of the duties of a law enforcement officer involving the control or direction of members of the public or exercising the power of arrest until he has successfully completed a firearms qualification program approved by the council; and provided, further, that within three working days of employment, the academy must be notified by a public law enforcement agency that a person has been employed by that agency as a law enforcement officer, and within three working days of the notice the firearms qualification program as approved by the director must be provided to the newly hired personnel; and shall only perform his duties as a law enforcement officer while accompanied by a certified law enforcement officer. If the firearms qualification program approved by the director is not available within three working days after receipt of the notice, then the public law enforcement agency making the request for the firearms qualification program may employ the person to perform any of the duties of a law enforcement officer, including those involving the control and direction of members of the public and exercising the power of arrest. Should any such person fail to secure certification within one year from his date of employment, he may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has been certified. He is not eligible for employment or appointment by any other agency in South Carolina as a law enforcement officer, nor is he eligible for any compensation by any law enforcement agency for services performed as an officer. Exceptions to the one‑year rule may be granted by the director in these cases:

(1) military leave or injury occurring during that first year which would preclude the receiving of training within the usual period of time; or

(2) in the event of the timely filing of application for training, which application, under circumstances of time and physical limitations, cannot be honored by the training academy within the prescribed period; or

(3) upon presentation of documentary evidence that the officer‑candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this chapter or by standards set by the council; or

(4) if it is determined by documentary evidence that the training will result in undue hardship to the requesting agency, the requesting agency must propose an alternate training schedule for approval.

(B) Notwithstanding another provision of law, in the case of a candidate for certification who begins one or more periods of state or federal military service within one year after his date of employment or appointment, the period of time within which he must obtain the certification required to become a law enforcement officer is automatically extended for an additional period equal to the aggregate period of time the candidate performed active duty or active duty for training as a member of the National Guard, the State Guard, or a reserve component of the Armed Forces of the United States, plus ninety days. The director must take all necessary and proper action to ensure that a candidate for certification as a law enforcement officer who performs military service within one year of his employment or appointment is not prejudiced in obtaining certification as a result of having performed state or federal military service.”

**Definitions, law enforcement misconduct**

SECTION 2. Section 23‑23‑150(A) and (B) of the 1976 Code, as added by Act 215 of 2018, is amended to read:

“(A) For purposes of this section:

(1) ‘Academy’ means the South Carolina Criminal Justice Academy.

(2) ‘Council’ means the Law Enforcement Training Council.

(3) ‘Misconduct’ means:

(a) a conviction, plea of guilty, plea of no contest or admission of guilt to a felony, a crime punishable by a sentence of more than one year, regardless of the sentence actually imposed, or a crime of moral turpitude, any of which were committed in this State or any other jurisdiction;

(b) the unlawful use of a controlled substance;

(c) the repeated use of excessive force in dealing with the public or prisoners;

(d) dangerous or unsafe practices involving firearms, weapons, or vehicles which indicate either a wilful or wanton disregard for the safety of persons or property;

(e) the physical or psychological abuse of members of the public or prisoners;

(f) the wilful failure to intervene when observing another officer physically abusing a person, whether or not the person is in custody, while in the performance of his official duties, if the officer knew the person’s rights were being violated, the officer had an opportunity to intervene, and the officer chose not to do so;

(g) the wilful and knowing failure to promptly report another officer, while in the performance of his official duties, abusing a person whether or not the person is in custody;

(h) the misrepresentation of employment‑related information;

(i) wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State;

(j) wilfully making false, misleading, incomplete, deceitful, or incorrect statements to any court of competent jurisdiction, or their staff members, whether under oath or not;

(k) wilfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State;

(l) the falsification of any application for certification and training based upon which the officer was admitted for training; or

(m) wilfully providing false information to the Criminal Justice Academy or the Law Enforcement Training Council.

(B)(1) The sheriff or the chief executive officer of a law enforcement agency or department within the State must report to the academy the occurrence of any act or multiple acts by a law enforcement officer, who is currently or was last employed by his agency, he reasonably believes to be misconduct. The report shall be made within fifteen days of the final agency or department action resulting from the internal investigation conducted by the agency or department, and shall be on a form prescribed by the council.

(2) Reported incidences of misconduct shall be prosecuted by the reporting agency before the contested case hearing. The reporting agency shall maintain prosecutorial discretion up to the time of the contested case hearing. If the agency declines to prosecute the allegation or allegations of misconduct, the agency shall provide a written report to the council stating that the case is not being prosecuted.

(3) A wilful failure to report information related to acts of misconduct shall subject the violator to a civil penalty as provided by the council. The council may impose civil fines, in its discretion, not to exceed five hundred dollars per day for each day an agency is out of compliance with this section.”

**Chokeholds**

SECTION 3. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23‑1‑250. (A) The use of a chokehold or carotid hold is limited to circumstances where the use of deadly force would otherwise be authorized and is objectively reasonable.

(B) In addition to any other penalty provided by law, the wilful use of excessive force in an objectively unreasonable manner may be considered misconduct and may serve as grounds for disciplinary action against the law enforcement officer, including dismissal, demotion, suspension, or transfer.

(C) The Law Enforcement Training Council shall develop and implement curricula and standards to address the lawful justifiable use of chokeholds and carotid holds in accordance with this section.”

**Law Enforcement Training Council**

SECTION 4. Chapter 23, Title 23 of the 1976 Code is amended by adding:

“Section 23‑23‑85. (A) The council shall establish required minimum standards for all law enforcement agencies. The standards must include, but are not limited to, policies regarding:

(1) the use of force and response to resistance by law enforcement officers. The policy must establish standards limiting officers to force that is objectively reasonable based on the totality of the circumstances involved. The policy must prohibit the use of chokeholds and carotid restraints as less lethal force options;

(2) uniform vehicle pursuit standards and the use of lethal options during pursuit;

(3) an officer’s duty to intervene in the actions of other observed officers;

(4) hiring and terminating practices;

(5) mandatory and uniform post basic academy field training;

(6) uniform implementation and the use of body‑worn cameras;

(7) the use of ‘no knock’ warrants;

(8) the establishment, implementation, or continuation of systems and processes for filing and investigating complaints, including anonymous complaints, against the law enforcement agency or an employee of the law enforcement agency. The council shall require law enforcement agencies to have a written directive, which must be made available to the public, that delineates how complaints can be made, the investigative process of such complaints, and a maximum timeframe for the resolution of the complaint. All substantiated complaints must be reported to the council through standardized forms as promulgated by the council; and

(9) the establishment, implementation, or continuation of an early warning system that identifies, assesses, reviews, and tracks at‑risk behavior of employees and requires intervention where appropriate.

(B) For the purposes of this section, ‘at‑risk behavior’ is defined as behavior or action that increases the risk of injury to an employee or to others, that could constitute a civil rights violation, or that could result in the law enforcement agency losing public support and confidence. Examples of ‘at‑risk behavior’ shall include, but are not limited to, repeated uses of force, at‑fault traffic accidents, repeated founded complaints, improper vehicle pursuits, repeated violations of agency policy or procedures, excessive use of leave, excessive Workers’ Compensation Claims, or documented substandard performance.

(C) The council shall have the authority to take punitive action against any law enforcement agency that refuses to comply with standards issued pursuant to this section, including civil fines, as described in Section 23‑23‑100.

(D) Nothing in this section shall be construed to prevent or prohibit law enforcement agencies from adopting policies that exceed the minimum standards adopted by the council.”

**Compliance Division**

SECTION 5. Chapter 23, Title 23 of the 1976 Code is amended by adding:

“Section 23‑23‑160. (A) There is hereby established a Compliance Division under the jurisdiction of the council. The inspectors and such other personnel as may be provided for the division shall be selected by the director.

(B) The division shall be responsible for inspecting, at least once every three years, the relevant policies and procedures for every law enforcement agency in this State to ensure compliance with minimum standards established in Section 23‑23‑85. For the purposes of this section, ‘law enforcement agency’ means any agency or entity of the State or any of its political subdivisions that employs or appoints law enforcement officers.

(C) If an inspection under this chapter discloses that a law enforcement agency does not meet the minimum standards established in Section 23‑23‑85, the council shall notify the law enforcement agency director and hold a meeting of the council to consider the inspection reports. If requested, the inspection personnel shall appear to advise and consult concerning appropriate corrective action. The law enforcement agency shall initiate appropriate corrective action within ninety days or may be subject to additional penalties, as described in Section 23‑23‑100.

(D) If a law enforcement agency produces evidence satisfactory to the director to prove the agency is currently accredited by either the South Carolina Law Enforcement Accreditation Council or the Commission on Accreditation for Law Enforcement Agencies, the agency shall be exempt from inspections pursuant to this section and shall be deemed to be in compliance with the minimum standards established in Section 23‑23‑85.”

**Compliance**

SECTION 6. Section 23‑23‑100 of the 1976 Code is amended to read:

“Section 23‑23‑100. (A) All public law enforcement agencies are required to comply with the provisions of this chapter and the regulations promulgated pursuant to this chapter. Whenever the director finds that any public law enforcement agency is in violation of any provision of this chapter, or any regulation promulgated pursuant to this chapter, the director shall notify the public law enforcement agency of the violation and of the public law enforcement agency’s duty to comply with the provision and/or regulation. This notification shall be sent to the public law enforcement agency head via certified U.S. Mail or delivered by hand. The agency must come into compliance within thirty days.

(B) If after thirty days the public law enforcement agency has failed to come into compliance, the director, at the direction of the council, shall issue an order requiring the public law enforcement agency to comply with the provision or regulation. This order may include a civil penalty not to exceed one thousand dollars per violation per day the agency is not in compliance or is found in violation. Any public law enforcement agency against which a civil penalty is invoked by the director may appeal the decision to the court of common pleas of the county where the public law enforcement agency is located.

(C) If the public law enforcement agency has failed to comply with the director’s order, the director shall either bring a civil action for injunctive relief or a civil enforcement action for failure to comply with the order in the court of common pleas of the county where the public law enforcement agency is located. Violation of any court order issued pursuant to this section must be considered in contempt of the issuing court and punishable as provided by law.

(D) If the imposition of civil fines fails to bring a law enforcement agency into compliance with the provisions of this chapter, regulations promulgated pursuant to this chapter, or an order authorized in this chapter, the council is authorized to temporarily hold in abeyance the law enforcement certification of every law enforcement officer employed or appointed by the noncompliant law enforcement agency until such time as the council deems the agency to be in compliance with the minimum standards or a motion for injunctive relief is settled. An individual whose law enforcement certification has been held in abeyance by the council is not authorized to enforce the laws or ordinances of this State or any political subdivision thereof. An individual who has had his law enforcement certification held in abeyance as a result of a noncompliant law enforcement agency shall not be prohibited from regaining law enforcement certification if he is subsequently employed or appointed by a compliant law enforcement agency, provided he is otherwise qualified to be certified. Further, in the event the council holds law enforcement certifications in abeyance at a noncompliant law enforcement agency, no law enforcement officer shall go without his or her regular pay, compensation, and benefits. Any records for the certification hold for the individual officer must be expunged by the council within thirty days of the termination of the hold after full compliance by the agency or the employment by another agency.”

**Ethical policing**

SECTION 7. Section 23‑23‑60(B)(5) of the 1976 Code is amended to read:

“(5) evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to:

(a) certification by the candidate’s employer that a background investigation has been conducted and the employer is of the opinion that the candidate is of good character;

(b) evidence satisfactory to the director that the candidate holds a valid current state driver’s license with no record during the previous five years for suspension of driver’s license as a result of driving under the influence of alcoholic beverages or dangerous drugs, driving while impaired (or the equivalent), reckless homicide, involuntary manslaughter, or leaving the scene of an accident. Candidates for certification as state or local correctional officers may hold a valid current driver’s license issued by any jurisdiction of the United States;

(c) evidence satisfactory to the director that a local credit check has been made with favorable results;

(d) evidence satisfactory to the director that the candidate’s fingerprint record as received from the Federal Bureau of Investigation and South Carolina Law Enforcement Division indicates no record of felony convictions; and

(e) evidence satisfactory to the director that the candidate has signed an attestation form committing to the practice of ethical policing, which means the discharge of responsibilities, stemming from employment as a law enforcement officer, which is devoid of misconduct and which is carried out in conformance with this chapter, including the duty to safeguard life and the duty to intervene.

In the director’s determination of good character, the director shall give consideration to all law violations, including traffic and conservation law convictions, as indicating a lack of good character. The director shall also give consideration to the candidate’s prior history, if any, of alcohol and drug abuse in arriving at a determination of good character;”

**Unlawful carrying of a handgun**

SECTION 8. Section 16‑23‑20(1) of the 1976 Code is amended to read:

“(1) regular, salaried law enforcement officers, and reserve police officers of a state agency, municipality, or county of the State, uncompensated Governor’s constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, and retired commissioned law enforcement officers;”

**Time effective**

SECTION 9. This act takes effect upon approval by the Governor; however, SECTION 4 and SECTION 5 take effect on January 1, 2023.

Ratified the 18th day of May, 2022.

Approved the 23rd day of May, 2022.

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