



SENATE BILL 300: Criminal Justice Reform.

2021-2022 General Assembly

Committee:		Date:	March 21, 2022
Introduced by:		Prepared by:	Susan Sitze Staff Attorney
Analysis of:	S.L. 2021-138		

OVERVIEW: *S.L. 2021-138, as amended by Part II of S.L. 2021-182, makes various changes to the Criminal Code, and increases law enforcement standardization and oversight, with varying effective dates. Please see the full summary for more details on the provisions of this act.*

BILL ANALYSIS:

Note: Unless otherwise specified, any use of "Commission" or "Commissions" in this summary refers to the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission.

PART I creates a public database of Law Enforcement Officer (LEO) certification suspensions and revocations. This part became effective October 1, 2021.

PART II does the following:

- Provides a process to have all LEO fingerprints entered in state and federal databases.
- Provides authorization for law enforcement agencies to participate in the FBI Next Generation Identification (NGI) System and Criminal Justice Record of Arrest and Prosecution Background (Rap Back) Service which would alert the SBI if the LEO has a subsequent arrest.

This part becomes effective January 1, 2023, and all personnel certified by either of the Commissions are required to have their fingerprints electronically submitted to the SBI for a state and national criminal history check no later than June 30, 2023.

PART III requires the Commissions to create a database for law enforcement agencies of "critical incident information" which is any incident involving the use of force by a law enforcement officer that results in death or serious bodily injury to a person. The database shall be available to law enforcement agencies and agencies are required to provide any information requested by the Commissions to maintain the database. This part became effective October 1, 2021, and applies to critical incidents on or after that date.

PART IV adds the following requirements when a LEO receives written notification that they may not be called to testify at trial based on bias, interest, or lack of credibility, which is commonly referred to as "Giglio" material:

- Requires that written notification of Giglio material be reported to the appropriate law enforcement standards commission.
- Requires the standards commission to notify law enforcement agencies and district attorneys of the reported information when a law enforcement officer is transferring to that agency.

This part became effective October 1, 2021, and applies to notices received prior to, on, or after that date.

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PART V directs the law enforcement standards commissions to develop uniform statewide minimum standards for law enforcement officers and justice officers and to report those standards to JPS Oversight no later than December 31, 2021.

PART VI allows health care providers to transport the respondent in an involuntary commitment. This part became effective October 1, 2021.

PART VII makes the following changes to training and standards for law enforcement officers:

- Effective for applications for certification filed and employees entering employment on or after January 1, 2022, requires that LEO receive training on mental health and wellness strategies.
- Effective for applications for certification filed and employees entering employment on or after January 1, 2022, requires a psychological screening for LEO certification or employment.
- Requires the commissions to jointly study the benefits of physical fitness testing throughout an officer's career, and whether the requirements should be adjusted based on the age of the officer. The results of this study must be reported to JPS Oversight by March 31, 2022.

PART VIII requires law enforcement agencies to create an early warning system within the agency to monitor officer actions and behaviors including discharge of a firearm, use of force, vehicle collisions, and citizen complaints. This part became effective December 1, 2021, and applies to activities and behaviors on or after that date.

PART IX requires the commissions to create a best practices recruitment guide to encourage diversity and report to JPS Oversight by April 1, 2022.

PART X requires the SBI to investigate deaths occurring due to use of force by a law enforcement officer and the death of any inmate in State or local custody, when requested by the Governor, a law enforcement agency head, a district attorney, or the Commissioner of Prisons. This part became effective October 1, 2021.

PART XI expands mandatory in-service training for LEO to include ethics, mental health topics, community policing, minority sensitivity, use of force, and the duty to intervene and report. This part became effective January 1, 2022.

PART XII exempts the adoption of in-service training standards from the rule-making process.

PART XIII limits the type of local ordinances that may impose a criminal penalty and requires local governments to specify in the ordinance that a criminal penalty applies. This part also provides a compliance defense for violation of local ordinances in certain situations. This part became effective December 1, 2021, and applies to offenses and violations committed on or after that date.

PART XIV, as amended by Section 2.5 of S.L. 2021-182, requires a first appearance for a defendant in custody for a misdemeanor and generally reduces the time for all first appearance to be conducted by a judge from 96 hours to 72 hours. However, if the courthouse is closed for transactions for a period longer than 72 hours, the first appearance must be held within 96 hours after the defendant is taken into custody. These provisions became effective December 1, 2021, and apply to criminal processes served on or after that date.

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Additionally, this part adds a provision allowing a magistrate to conduct a first appearance if neither a district court judge nor the clerk of superior court are available to do so within the required period of time. This magistrate provision was enacted in this act (S.L. 2021-138), but was removed by S.L. 2021-182, with the changes becoming effective December 1, 2021. However, Section 8.4 of S.L. 2022-6 reinserted the magistrate provision effective retroactively to July 1, 2021. Overall, S.L. 2022-6 became effective March 17, 2022, so the new provision clearly applies from that point forward, but it remains to be seen whether there is any practical effect to the retroactive effective date of the provision.

PART XV requires the commissions conduct a search of the National Decertification Index (NDI) for every applicant for certification or lateral transfer to determine if the applicant has any record that would disqualify the applicant for certification. This part became effective October 1, 2021, and applies to applications for certification submitted on or after that date.

PART XVI creates a duty for law enforcement officers who observe excessive use of force to attempt to intervene if possible and report the excessive use of force in all instances. This part became effective December 1, 2021, and applies to uses of force that occur on or after that date.

PART XVII removes the Standards Commissions from a nonexclusive list of State Agency Licensing Boards effective December 1, 2021.

PART XVIII, as amended by Section 2 of S.L. 2021-182, amends satellite-based monitoring (SBM) of sex offenders to address constitutional issues in the following manner:

- Provides a legislative finding of efficacy stating that SBM reduces recidivism.
- Creates a “reoffender” classification which is a recidivist with more than one felony registerable offense, effectively narrowing the class of sex offenders subject to SBM.
- Reduces lifetime SBM to ten years.
- Allows some individualized assessment for the sexually violent predator, reoffender, etc., and allows the court some discretion to order SBM for ten years if the offender requires “the highest possible level of supervision.”
- Allows for a judicial review to terminate or modify SBM for offenders.
- Provides a process for offenders ordered prior to December 1, 2021, to enroll in SBM for a period longer than 10 years, to petition for termination or modification of the monitoring requirement.

This part became effective December 1, 2021, and applies generally to persons required to enroll and SBM determinations made on or after that date.

PART XIX modifies the offense of resisting an officer in G.S. 14-223, for offenses committed on or after December 1, 2021, as follows:

- Create a Class I felony resisting an officer if the defendant's resisting is the proximate cause of serious injury to the officer.
- Create a Class F felony resisting an officer if the defendant's resisting is the proximate cause of serious bodily injury to the officer.

This part also directs DPS to create Public Service Announcements and a target social media campaign regarding how to interact lawfully with law enforcement.

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PART XX establishes the Bipartisan North Carolina Legislative Working Group on Criminal Law Recodification to create a database of State crimes and ordinance offenses, report on the instances of those offenses, and recommend draft legislation.

PART XXI modifies the law regarding disclosure of body-worn camera recordings. These provisions only apply to "disclosure," which allows certain parties to view or listen to a recording, and do not apply to "release," which provides a copy of a recording to the requestor. These provisions became effective December 1, 2021, apply to all requests for disclosure made on or after that date, and include the following:

- Requires a law enforcement agency that receives a request for disclosure of a recording of body-worn camera footage which depicts a death or serious bodily injury to petition the court within three business days for a determination of how and when the footage shall be disclosed.
- Requires the court to make a determination on disclosure within seven business days of the filing of the petition.
- If disclosure is denied because of a law enforcement investigation, requires a review of the determination within 20 business days of the original order.
- Requires persons to request disclosure through use of a notarized form acknowledging that they are prohibited from recording or copying the disclosed recording.
- Creates a Class 1 Misdemeanor for recording or making a copy of a recording disclosed under the new subsection.
- Creates a Class I felony for disseminating a recording or copy of a recording disclosed under the new subsection.

EFFECTIVE DATE: Except as otherwise provided, this act became effective September 2, 2021.

**Jennifer Bedford, Staff Attorney, substantially contributed to this summary.*