

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 435

Short Title: Sheriffs' Commission Changes/AB.

(Public)

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Sponsors: Representatives Kiser, McCrary (Co-sponsors); Adams, Alexander, Beall, Black, W. Brown, Buchanan, Carpenter, Church, Culpepper, Cunningham, Dickson, Fitch, Fox, Gamble, Gray, Hensley, Hightower, Hill, Hurley, Locke, Luebke, McComas, McMahan, Mercer, Michaux, G. Miller, Owens, Pate, Rayfield, Redwine, Reynolds, Richardson, Sexton, Shaw, Sutton, Thompson, Tolson, Warner, Weatherly, and Wilkins.

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Referred to: Judiciary II.

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March 9, 1995

A BILL TO BE ENTITLED

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2 AN ACT RELATING TO APPOINTMENTS TO THE SHERIFFS' EDUCATION AND  
3 TRAINING STANDARDS COMMISSION, AMENDING THE LAWS RELATING  
4 TO THE POWERS OF AND APPEALS BEFORE THE SHERIFFS' EDUCATION  
5 AND TRAINING STANDARDS COMMISSION, AND OTHERWISE  
6 PERTAINING TO CHAPTER 17E OF THE GENERAL STATUTES.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 17E-1 reads as rewritten:

9 **"§ 17E-1. Findings and policy.**

10 The General Assembly finds and declares that the office of sheriff, the office of  
11 deputy sheriff and the other officers and employees of the sheriff of a county are unique  
12 among all of the law-enforcement offices of North Carolina. The administration of  
13 criminal justice has been declared by Chapter 17C of the General Statutes to be of  
14 statewide concern to the people of the State. The sheriff is the only officer of local  
15 government required by the Constitution. The sheriff, in addition to his criminal justice  
16 responsibilities, is the only officer who is also responsible for the courts of the State, and

1 acting as their bailiff and marshall. The sheriff administers and executes criminal and  
2 civil justice and acts as the ex officio ~~jailer-detention officer~~.

3 The deputy sheriff has been held by the Supreme Court of this State to hold an office  
4 of special trust and confidence, acting in the name of and with powers coterminous with  
5 his principal, the elected sheriff.

6 The offices of sheriff and deputy sheriff are therefore of special concern to the public  
7 health, safety, welfare and morals of the people of the State. The training and educational  
8 needs of such officers therefore require particularized and differential treatment from  
9 those of the criminal justice officers certified under Chapter 17C of the General Statutes."

10 Sec. 2. G.S. 17E-2 reads as rewritten:

11 **"§ 17E-2. Definitions.**

12 Unless the context clearly requires otherwise, the following definitions apply to this  
13 Chapter:

- 14 (1) 'Commission' means the North Carolina Sheriffs' Education and  
15 Training Standards Commission.
- 16 (2) 'Office' or 'department' means the sheriff of a county, his deputies, his  
17 employees and such equipment, space, provisions and quarters as are  
18 supplied for their use.
- 19 (3) 'Justice officer' ~~or 'law enforcement officer'~~ means a person who, through  
20 the special trust and confidence of the sheriff of the county, has taken  
21 the oath of office prescribed by Chapter 11 of these statutes as a peace  
22 officer in the office of a sheriff, or who has been duly appointed as a  
23 ~~jailer-detention officer~~ by the sheriff. The term includes 'deputy sheriffs'  
24 and 'special deputy sheriffs' but does not include clerical and support  
25 personnel not required to take an oath. The term 'special deputy' means  
26 a person who, through appointment by the sheriff, becomes an unpaid  
27 criminal justice officer to perform a specific act directed to ~~him~~ the  
28 person by the sheriff. Justice officer shall also mean the administrator  
29 and the other custodial personnel of district confinement facilities as  
30 defined in G.S. 153A-219. Nothing in this Chapter shall transfer any  
31 supervisory or administrative control of employees of district  
32 confinement facilities to the office of the sheriff."

33 Sec. 3. Effective September 1, 1995, G.S. 17E-3 reads as rewritten:

34 **"§ 17E-3. North Carolina Sheriffs' Education and Training Standards Commission**  
35 **established; members; terms; vacancies.**

36 (a) There is hereby established the North Carolina Sheriffs' Education and  
37 Training Standards Commission. The Commission shall be composed of 16 members as  
38 follows:

- 39 (1) Sheriffs. — ~~Eleven sheriffs—Twelve sheriffs appointed by the North~~  
40 Carolina Sheriffs' Association, 10 representing each of the  
41 Congressional districts appointed by the North Carolina Sheriffs'  
42 Association, in such manner as shall be prescribed by the Constitution  
43 or bylaws of such Association. Commission Districts established in this

1 section, and two appointed at large in such manner as shall be  
2 prescribed by the Constitution or bylaws of the Association.

3 (2) Appointees of the General Assembly. – One person appointed by the  
4 Speaker of the House of Representatives pursuant to ~~Article 16,~~ G.S.  
5 120-121, and one person appointed by the ~~Lieutenant Governor~~ President  
6 Pro Tempore of the Senate pursuant to ~~Article 16,~~ G.S. 120-121.

7 (3) One sheriff appointed by the Lieutenant Governor.

8 ~~(3)(4)~~ County Commissioners. – One county commissioner appointed by the  
9 Governor as recommended from three nominees from the North  
10 Carolina Association of County Commissioners.

11 ~~(4)(5)~~ Others. – The President of the Department of Community Colleges or  
12 his designee and the Director of the Institute of Government or his  
13 designee shall be ex officio, nonvoting members of the Commission.

14 (b) Terms. – ~~Sheriffs representing Congressional Districts 1, 4, 7, and 10 as~~  
15 ~~established and in effect for calendar year 1991, shall be appointed to a term of one year;~~  
16 ~~sheriffs representing Congressional Districts 2, 5, 8, and 11 as established and in effect~~  
17 ~~for calendar year 1991, shall be appointed to a term of two years; sheriffs representing~~  
18 ~~Congressional Districts 3, 6, and 9 as established and in effect for calendar year 1991,~~  
19 ~~shall be appointed to a term of three years. Members shall be appointed for staggered~~  
20 ~~terms. Beginning September 1, 1995, sheriffs representing Commission Districts 3, 6,~~  
21 ~~and 9 shall be appointed to three-year terms; sheriffs representing Commission Districts~~  
22 ~~1, 4, and 7 shall be appointed to one-year terms; sheriffs representing Commission~~  
23 ~~Districts 2, 5, 8, and 10 and the two at-large sheriffs, shall be appointed to two-year~~  
24 ~~terms. The appointee of the House of Representatives shall serve a term of two years.~~  
25 ~~The appointee of the Senate President Pro Tempore of the Senate shall serve a term of~~  
26 ~~two years. The appointee of the Lieutenant Governor shall serve a term of two years.~~  
27 ~~The county commissioner appointed by the North Carolina Association of County~~  
28 ~~Commissioners shall serve a term of two years. After the initial terms established herein~~  
29 ~~have expired, all sheriffs appointed to the Commission shall be appointed to terms of~~  
30 ~~three years. years with the exception of the appointee of the Lieutenant Governor.~~

31 If an individual ceases to be a sheriff then his seat on the Commission becomes  
32 vacated upon his ceasing to be qualified to hold that seat. Any individual appointed or  
33 designated to serve on this Commission shall serve until his successor is appointed and  
34 qualified.

35 (c) Vacancies. – If any vacancy occurs in the membership of the Commission, the  
36 appointing authority shall appoint another person to fill the unexpired term of the  
37 vacating member.

38 (d) Compensation. – None of the members of the Commission shall receive  
39 compensation for serving on the Commission. However, if the North Carolina  
40 Department of Justice has funds available, then members of the Commission who are  
41 State officers or employees may be reimbursed for their expenses in accordance with  
42 G.S. 138-6; members of the Commission who are full-time salaried public officers or  
43 employees other than State officers or employees may be reimbursed for their expenses

1 in accordance with G.S. 138-5(b). All other members of the Commission may receive  
2 compensation and reimbursement for expenses in accordance with G.S. 138-5.

3 (e) Officers. – The chairman shall be elected from among the membership. The  
4 Commission shall select its other officers from among the membership as it deems  
5 necessary. All officers serve for one year, or until successors are qualified.

6 (f) Removal. – The Commission may remove a member for misfeasance,  
7 malfeasance, nonfeasance or neglect of duty.

8 (g) The Commission has power to adopt its own rules of procedure. The  
9 Commission shall meet no less than four times a year. It shall also meet on the call of the  
10 chairman or vice-chairman, or any four members of the Commission.

11 (h) The Commission may appoint any resident of the State to an adjunct or special  
12 committee created or appointed by it to study or make recommendations or reports on  
13 any subject matter related to its duties or the office of sheriff.

14 (i) Members of the Commission shall have the authority to designate, in writing,  
15 one member of his office to represent them and, if the member possesses voting  
16 authority, vote for them on the Commission at all meetings the voting member is unable  
17 to attend. This voting authority shall extend to all matters brought before the  
18 Commission which require a vote, to include the entry of final agency decisions and the  
19 adoption of administrative rules.

20 (j) The State is divided into 10 Commission Districts established for the  
21 appointment of members of the North Carolina Sheriffs' Education and Training  
22 Standards Commission as follows:

23 District 1: The Counties of Bertie, Camden, Chowan, Currituck, Gates, Hertford,  
24 Pasquotank, Perquimans, Tyrell, and Washington.

25 District 2: The Counties of Caswell, Edgecombe, Franklin, Granville, Halifax, Nash,  
26 Northampton, Person, Vance, and Warren.

27 District 3: The Counties of Beaufort, Craven, Dare, Duplin, Hyde, Jones, Lenoir,  
28 Martin, Pamlico, and Pitt.

29 District 4: The Counties of Chatham, Durham, Greene, Harnett, Johnston, Lee,  
30 Orange, Wake, Wayne, and Wilson.

31 District 5: The Counties of Alleghany, Alexander, Ashe, Catawba, Gaston, Lincoln,  
32 Surry, Watauga, Wilkes, and Yadkin.

33 District 6: The Counties of Alamance, Davidson, Davie, Forsyth, Guilford, Iredell,  
34 Randolph, Rockingham, Rowan, and Stokes.

35 District 7: The Counties of Bladen, Brunswick, Carteret, Columbus, Cumberland,  
36 New Hanover, Onslow, Pender, Robeson, and Sampson.

37 District 8: The Counties of Anson, Cabarrus, Hoke, Mecklenburg, Montgomery,  
38 Moore, Richmond, Scotland, Stanly, and Union.

39 District 9: The Counties of Avery, Burke, Caldwell, Cleveland, Madison, McDowell,  
40 Mitchell, Polk, Rutherford, and Yancey.

41 District 10: The Counties of Buncombe, Cherokee, Clay, Graham, Haywood,  
42 Henderson, Jackson, Macon, Swain, and Transylvania."

43 Sec. 4. G.S. 17E-4(a)(1) reads as rewritten:

1       "(a) The Commission shall have the following powers, duties, and responsibilities,  
2 which are enforceable through its rules and regulations, certification procedures, or the  
3 provisions of G.S. 17E-8 and G.S. 17E-9:

- 4           (1) Promulgate rules and regulations for the administration of this Chapter,  
5 which rules may require (i) the submission by any agency of  
6 information with respect to the employment, education, and training of  
7 its ~~law-enforcement~~-justice officers, and (ii) the submission by any  
8 training school of information with respect to its programs that are  
9 required by this Chapter;"

10       Sec. 5. G.S. 17E-4(b)(1) reads as rewritten:

- 11       "(1) Certify, pursuant to the standards that it has established for the purpose,  
12 ~~law-enforcement~~-justice officers for those law-enforcement agencies that  
13 elect to comply with the minimum education, training, and experience  
14 standards established by the Commission for positions for which  
15 advanced or specialized training, education, and experience are  
16 appropriate;"

17       Sec. 6. G.S. 17E-6(c)(8) reads as rewritten:

- 18       "(8) The director may divulge any information in the Division's personnel  
19 file of a ~~law-enforcement~~-justice officer or applicant for certification to  
20 the head of the department employing the officer or considering the  
21 applicant for employment when the director deems it necessary and  
22 essential to the retention or employment of said officer or applicant. The  
23 information may be divulged whether or not such information was  
24 contained in a personnel file maintained by a State or by a local  
25 government agency."

26       Sec. 7. G.S. 17E-7 reads as rewritten:

27       "**§ 17E-7. Required standards.**

28       (a) Justice officers shall not be required to meet any requirements of subsections  
29 (b) and (c) of this section as a condition of continued employment, nor shall failure of a  
30 justice officer to fulfill such requirements make him ineligible for any promotional  
31 examination for which he is otherwise eligible if the officer held an appointment prior to  
32 July 1, 1983, and is a sworn law-enforcement officer with power of arrest. The legislature  
33 finds, and it is hereby declared to be the policy of this Chapter, that such officers have  
34 satisfied such requirements by their experience. It is the intent of the Chapter that all ~~law-~~  
35 ~~enforcement~~-justice officers employed at the entry level after the Commission has adopted  
36 the required standards shall meet the requirements of this Chapter. All justice officers  
37 who are exempted from the required entry level standards by this subsection are subject  
38 to the requirements of subsections (b) and (c) of this section as well as the requirements  
39 of G.S. 17E-4(a) in order to retain certification.

40       (b) The Commission shall provide, by regulation, that no person may be appointed  
41 as a ~~law-enforcement~~-justice officer at entry level, except on a temporary or probationary  
42 basis, unless such person has satisfactorily completed an initial preparatory program of  
43 training at a school certified by the Commission or has been exempted from that

1 requirement by the Commission pursuant to this Chapter. Upon separation of a ~~law-~~  
2 ~~enforcement-justice~~ officer from a sheriff's department within the temporary or  
3 probationary period of appointment, the probationary certification shall be terminated by  
4 the Commission. Upon the reappointment to the same department or appointment to  
5 another department of an officer who has separated from a department within the  
6 probationary period, the officer shall be charged with the amount of time served during  
7 his initial appointment and allowed the remainder of the probationary period to complete  
8 the basic training requirement. Upon the reappointment to the same department or  
9 appointment to another department of an officer who has separated from a department  
10 within the probationary period and who has remained out of service for more than one  
11 year from the date of separation, the officer shall be allowed another probationary period  
12 to complete such training as the Commission shall require by rule for an officer returning  
13 to service.

14 (c) In addition to the requirements of subsection (b) of this section, the  
15 Commission, by rules and regulations, may fix other qualifications for the employment  
16 and retention of ~~law-enforcement-justice~~ officers including minimum age, education,  
17 physical and mental standards, citizenship, good moral character, experience, and such  
18 other matters as relate to the competence and reliability of persons to assume and  
19 discharge the responsibilities of the office, and the Commission shall prescribe the means  
20 for presenting evidence of fulfillment of these requirements.

21 Where minimum educational standards are not met, yet the individual shows potential  
22 and a willingness to achieve the standards by extra study, they may be waived by the  
23 Commission for the reasonable amount of time it will take to achieve the standards  
24 required. Upon petition from a sheriff, the Commission may grant a waiver of any  
25 provisions of this section (17E-7) for any justice officer serving that sheriff.

26 (d) The Commission may issue a certificate evidencing satisfaction of the  
27 requirements of subsections (b) and (c) of this section to any applicant who presents such  
28 evidence as may be required by its rules and regulations of satisfactory completion of a  
29 program or course of instruction in another jurisdiction."

30 Sec. 8. G.S. 17E-8 reads as rewritten:

31 **"§ 17E-8. Special requirements; authorizations.**

32 (a) Nothing in this Chapter shall be construed as a condition precedent to the  
33 taking of the oath of office or the exercise of the powers, duties or privileges of the  
34 offices of sheriff or ~~deputy-justice officer~~.

35 (b) Any sheriff or ~~deputy-sheriff-justice officer~~, who has taken the oath of office, or  
36 person who has received a special deputation for the purpose from the sheriff, acts  
37 validly, and his arrests, executions, levies and sales are valid, without regard to whether  
38 he has complied with this Chapter or the rules or regulations adopted under this Chapter,  
39 unless he has been ordered to cease and desist from such actions by the court, or pursuant  
40 to G.S. 17E-9."

41 Sec. 9. G.S. 17E-9 reads as rewritten:

42 **"§ 17E-9. Compliance; enforcement.**

1       (a) ~~Any law enforcement justice officer appointed on a temporary or probationary~~  
2 ~~basis who does not comply with the training provisions of this Chapter within the~~  
3 ~~probationary period of certification or any extension of such probationary period of~~  
4 ~~certification authorized by the Commission, shall not be authorized to exercise the~~  
5 ~~powers of a law enforcement justice officer and shall not be authorized to exercise the~~  
6 ~~power of arrest unless such certification or deficiency has been waived by the~~  
7 ~~Commission. The Commission shall enforce the provisions of the subsection this section~~  
8 ~~by the entry of appropriate orders.~~

9       (b) Any person who desires to appeal the proposed denial, suspension, or  
10 revocation of any certification authorized to be issued by the Commission shall file a  
11 written appeal with the Commission not later than 30 days following notice of denial,  
12 suspension, or revocation.

13       (c) The Commission may appear in its own name and apply to courts having  
14 jurisdiction for injunctions to prevent violations of this Chapter or of rules issued  
15 pursuant thereto; specifically, the performance of justice officer functions by officers or  
16 individuals who are not in compliance with the standards and requirements of this  
17 Chapter or of rules issued pursuant thereto. A single act of performance of a justice  
18 officer function by an officer or individual who is performing such function in violation  
19 of this Chapter is sufficient, if shown, to invoke the injunctive relief of this section."

20               Sec. 10. Chapter 17E of the General Statutes is amended by adding a new  
21 section to read:

22 **"§ 17E-12. Pardons.**

23       When a person presents competent evidence that the person has been granted an  
24 unconditional pardon of innocence for a crime in this State, any other state, or the United  
25 States, the Commission may not deny, suspend, or revoke that person's certification based  
26 solely on the commission of that crime or for alleged lack of good moral character due to  
27 the commission of that crime."

28               Sec. 11. This act becomes effective September 1, 1995.