

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 362

Judiciary I/Constitution Committee Substitute Adopted 5/4/95

Short Title: Sheriffs' Commission Changes/AB.

(Public)

Sponsors:

Referred to:

March 13, 1995

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"§ 17E-1. Findings and policy.

The General Assembly finds and declares that the office of sheriff, the office of deputy sheriff and the other officers and employees of the sheriff of a county are unique among all of the law-enforcement offices of North Carolina. The administration of criminal justice has been declared by Chapter 17C of the General Statutes to be of statewide concern to the people of the State. The sheriff is the only officer of local government required by the Constitution. The sheriff, in addition to his criminal justice responsibilities, is the only officer who is also responsible for the courts of the State, and acting as their bailiff and marshall. The sheriff administers and executes criminal and civil justice and acts as the ex officio ~~jailer~~-detention officer.

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

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

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

9 **"§ 17E-2. Definitions.**

10 Unless the context clearly requires otherwise, the following definitions apply to this
11 Chapter:

12 (1) 'Commission' means the North Carolina Sheriffs' Education and
13 Training Standards Commission.

14 (2) 'Office' or 'department' means the sheriff of a county, his deputies, his
15 employees and such equipment, space, provisions and quarters as are
16 supplied for their use.

17 (3) 'Justice officer' ~~or 'law enforcement officer'~~ means a person who, through
18 the special trust and confidence of the sheriff of the county, has taken
19 the oath of office prescribed by Chapter 11 of these statutes as a peace
20 officer in the office of a sheriff, or who has been duly appointed as a
21 ~~jailer~~ detention officer by the sheriff. The term includes 'deputy sheriffs'
22 and 'special deputy sheriffs' but does not include clerical and support
23 personnel not required to take an oath. The term 'special deputy' means
24 a person who, through appointment by the sheriff, becomes an unpaid
25 criminal justice officer to perform a specific act directed to ~~him~~ the
26 person by the sheriff. Justice officer shall also mean the administrator
27 and the other custodial personnel of district confinement facilities as
28 defined in G.S. 153A-219. Nothing in this Chapter shall transfer any
29 supervisory or administrative control of employees of district
30 confinement facilities to the office of the sheriff."

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

32 **"§ 17E-3. North Carolina Sheriffs' Education and Training Standards Commission**
33 **established; members; terms; vacancies.**

34 (a) There is hereby established the North Carolina Sheriffs' Education and
35 Training Standards Commission. The Commission shall be composed of ~~16~~ 17 members
36 as follows:

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

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

5 (3) County Commissioners. – One county commissioner appointed by the
6 Governor as recommended from three nominees from the North
7 Carolina Association of County Commissioners.

8 (4) Others. – The President of the Department of Community Colleges or
9 his designee and the Director of the Institute of Government or his
10 designee shall be ex officio, nonvoting members of the Commission.

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

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

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

33 (d) Compensation. – None of the members of the Commission shall receive
34 compensation for serving on the Commission. However, if the North Carolina
35 Department of Justice has funds available, then members of the Commission who are
36 State officers or employees may be reimbursed for their expenses in accordance with
37 G.S. 138-6; members of the Commission who are full-time salaried public officers or
38 employees other than State officers or employees may be reimbursed for their expenses
39 in accordance with G.S. 138-5(b). All other members of the Commission may receive
40 compensation and reimbursement for expenses in accordance with G.S. 138-5.

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

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

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

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

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

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

18 District 1: The Counties of Bertie, Camden, Chowan, Currituck, Gates, Hertford,
19 Pasquotank, Perquimans, Tyrrell, and Washington.

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

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

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

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

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

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

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

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

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

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

39 "(1) Promulgate rules and regulations for the administration of this Chapter,
40 which rules may require (i) the submission by any agency of
41 information with respect to the employment, education, and training of
42 its ~~law enforcement~~ justice officers, and (ii) the submission by any

1 training school of information with respect to its programs that are
2 required by this Chapter;".

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

4 "(1) Certify, pursuant to the standards that it has established for the purpose,
5 ~~law-enforcement-justice~~ officers for those law-enforcement agencies that
6 elect to comply with the minimum education, training, and experience
7 standards established by the Commission for positions for which
8 advanced or specialized training, education, and experience are
9 appropriate;".

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

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

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

20 **"§ 17E-7. Required standards.**

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

33 (b) The Commission shall provide, by regulation, that no person may be appointed
34 as a ~~law-enforcement-justice~~ officer at entry level, except on a temporary or probationary
35 basis, unless such person has satisfactorily completed an initial preparatory program of
36 training at a school certified by the Commission or has been exempted from that
37 requirement by the Commission pursuant to this Chapter. Upon separation of a ~~law-~~
38 ~~enforcement-justice~~ officer from a sheriff's department within the temporary or
39 probationary period of appointment, the probationary certification shall be terminated by
40 the Commission. Upon the reappointment to the same department or appointment to
41 another department of an officer who has separated from a department within the
42 probationary period, the officer shall be charged with the amount of time served during
43 his initial appointment and allowed the remainder of the probationary period to complete

1 the basic training requirement. Upon the reappointment to the same department or
2 appointment to another department of an officer who has separated from a department
3 within the probationary period and who has remained out of service for more than one
4 year from the date of separation, the officer shall be allowed another probationary period
5 to complete such training as the Commission shall require by rule for an officer returning
6 to service.

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

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

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

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

24 **"§ 17E-8. Special requirements; authorizations.**

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

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

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

35 **"§ 17E-9. Compliance; enforcement.**

36 (a) Any ~~law-enforcement-justice~~ justice officer ~~appointed on a temporary or probationary~~
37 ~~basis~~ who does not comply with the ~~training~~ provisions of this Chapter ~~within the~~
38 ~~probationary period of certification or any extension of such probationary period of~~
39 ~~certification authorized by the Commission,~~ shall not be authorized to exercise the
40 powers of a ~~law-enforcement-justice~~ justice officer and shall not be authorized to exercise the
41 power of arrest unless such certification or deficiency has been waived by the
42 Commission. The Commission shall enforce the provisions of ~~the subsection~~ this section
43 by the entry of appropriate orders.

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

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

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

14 **"§ 17E-12. Pardons.**

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

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