
Report on Law Enforcement Professionalism



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¹ Items in this report in **bold red** were accomplished, or partially accomplished in the 2021 Legislative Session.

Introduction

The North Carolina Sheriffs' Association (Association) is a non-profit and non-partisan organization whose membership is comprised of all 100 Sheriffs in North Carolina. The Association's mission is to protect, promote, preserve, and enhance the Office of Sheriff in North Carolina through education, training, and legislative initiatives that increase public safety and protect the rights of the citizens of North Carolina.

The Association recognizes the need for law enforcement leaders to take proactive steps to ensure protection of the rights and safety of all citizens, while also making every effort to improve the profession for those who have chosen and will choose to become public servants as law enforcement officers in North Carolina.

In light of those needs, the Association made the decision after the death of George Floyd and the civil unrest that followed to form a **Working Group on Law Enforcement Professionalism** (Working Group). The Working Group was designed to consider efforts law enforcement and other leaders statewide need to undertake and efforts already underway in North Carolina to improve the profession of law enforcement through reform.

The Working Group consisted of ten (10) sheriffs from across the State each representing a ten (10) county district, as well as:

- Sheriff James E. Clemmons, Jr., Richmond County, Co-chair
Past-President
- Sheriff John W. Ingram, V, Brunswick County, Co-chair
Chairman, Executive Committee
- Sheriff David A. Mahoney, Transylvania County
President of the North Carolina Sheriffs' Association.

The Working Group held a series of meetings with presentations from the Directors of the law enforcement certification bodies in North Carolina, the Director of the North Carolina Justice Academy, the Director of the North Carolina State Bureau of Investigation, and co-chairs of the new Center on the Reduction of Law Enforcement Use of Force, as well as others. Discussions focused on the topics of law enforcement as a profession, certification, agency accreditation, hiring and retention, as well as training and policy in regard to use of force, ethics, race, communication, interaction with communities of color, and transparency, among others.

After much consideration of the discussions and presentations, the Working Group concluded there are areas where North Carolina has made substantial progress. There also exists a unique opportunity for North Carolina to improve in other areas and to be a model for the country in reform. The Working Group presented their proposed recommendations to the Executive Committee of the Association. The Executive Committee reviewed and supplemented the Working Group's recommendations. The recommendations of the Executive Committee were then submitted to the membership for approval at a meeting on October 13, 2020. This report is a result of that process and contains the positions of the Association. The Association is confident that the changes proposed will improve law enforcement as a profession.

Working Group Membership

Co-Chair: Sheriff John W. Ingram, V (Brunswick County)
Co-Chair: Sheriff James E. Clemmons, Jr. (Richmond County)
President: Sheriff David A. Mahoney (Transylvania County)
District 1: Sheriff Dexter Hayes (Hertford County)
District 2: Sheriff Johnny Williams (Warren County)
District 3: Sheriff Chip Hughes (Craven County)
District 4: Sheriff Clarence Birkhead (Durham County)
District 5: Sheriff Phil Howell (Ashe County)
District 6: Sheriff Sam Page (Rockingham County)
District 7: Sheriff Jim McVicker (Bladen County)
District 8: Dr. Hubert A. Peterkin, Sheriff (Hoke County)
District 9: Sheriff Steve Whisenant (Burke County)
District 10: Sheriff Quentin Miller (Buncombe County)

2021 Legislative Update

Thanks in large part to the work of the Association's Working Group on Professionalism, the Executive Committee, the Legislative Committee and the participation by sheriffs during Legislative Day, the Association was once again successful in protecting and promoting the Office of Sheriff at the General Assembly.

The 2021 Session of the North Carolina General Assembly was one of the longest sessions in recent history. As expected, the session saw a large number of law enforcement and criminal justice reform related bills filed and passed. The Association was fortunate to be invited to lend a voice to the conversation around this legislation and actively pursued legislation which promoted the positions contained in this Report.

As a whole, the Association's Legislative and Executive Committees considered over 150 bills or issues for positions this session, the most considered in the recent past. The subject matter of many of those bills were topics covered in the October 21, 2020 edition of our Report on Law Enforcement Professionalism.

The Report has been updated to highlight those recommendations which became legislation this session. In reviewing the updated version of the Report, items highlighted in **red** in the Table of Contents and mirrored in **red** in the body of the report became legislation this session. As you can see from reviewing the Report, the Association was successful in promoting recommended changes.

It is important to note that in the wake of the use of force in Pasquotank County which resulted in a citizen's death, the law enforcement agency recording law became a topic of much debate at the General Assembly. This Report recommends no change to that law. However, it became apparent that some change would take place this session. Fortunately, legislators asked the Association for input and the legislation that passed changing how law enforcement agency recordings are disclosed was ultimately supported by the Association.

As the short session begins in the Spring, issues addressed in this Report will likely continue to be part of legislative conversation at the General Assembly. Association staff will continue to promote the positions contained here and work to promote and preserve the Office of Sheriff and to support law enforcement professionalism.

North Carolina Progress

North Carolina has been working for many years to improve the law enforcement profession. However, the Association is aware of and understands there are great strides left to be made to address improvement within the law enforcement profession and create stronger community relationships through law enforcement reform.

The Association recognizes that some communities have lost confidence in law enforcement. To those individuals, the very few bad actors in our profession make it difficult to trust anyone who wears a badge. As sheriffs, the recommendations we make in this report are in an effort to create a law enforcement profession that will not tolerate racism and excessive force by law enforcement, and that will hold North Carolina law enforcement to a high standard. Sheriffs recognize the efforts we take now must be sustained in order to effect real change and that we must listen and be responsive to our personnel and the community about any issues among our ranks.

In an effort towards progress, and as a rejection of complacency, the Association identified several areas where advancements in the profession will lead to better service to and protection of the rights of the citizens of the State of North Carolina. In addition, these improvements will provide the ability to recruit and retain the best and most qualified individuals in the law enforcement profession. Some of those initiatives and changes require funding and some do not.

As such, the Association recommends changes to and, in some cases entirely new procedures in areas including the process for certification, the decertification of officers, training, agency accreditation, use of force policy and data collection, and recruiting and retention. Each of these topics is more fully discussed below.

Recommended Changes Not Requiring Funding

Minimum Standards – Accomplished in Session Law 2021-138 (Senate Bill 300)

North Carolina General Statutes allow the North Carolina Sheriffs' Education and Training Standards Commission and the North Carolina Criminal Justice Education and Training Standards Commission² to set minimum standards for entry into the profession of law enforcement. The Sheriffs' Standards Commission certifies all deputy sheriffs, detention officers, and many telecommunicators in North Carolina. The Criminal Justice Standards Commission certifies all police officers, State law enforcement officers, State correction officers, and company and campus police officers, among others.

Each Commission is governed by their own rules published in the North Carolina Administrative Code. Most minimum standards are the same. For example, among other things, both Commissions require a physical exam, fingerprints, a negative drug screen, citizenship, and that applicants be of good moral character.³ However, there are four areas in which current minimum standards of the Commissions vary: (1) applicant age, (2) requirements for psychological screening prior to certification, (3) employment prior to certification, and (4) requirements regarding prior misdemeanor criminal history.⁴

² Hereinafter, the Sheriffs' Standards Commission and Criminal Justice Standards Commission will be referred to as "the Commission(s)".

³ 12 NCAC 10B.0301, 12 NCAC 09B.0101.

⁴ Id.

The Association believes the Commissions should have the same minimum standards for all law enforcement officers and therefore recommends the Commissions make necessary Administrative Code changes to:

1) Require law enforcement officer applicants to be 21 years of age.

Currently, the Sheriffs' Standards Commission requires an applicant for law enforcement officer certification to be 21 years of age and the Criminal Justice Standards Commission requires an applicant for law enforcement officer certification to be 20 years of age.

2) Require applicants to pass a psychological screening within one year prior to certification and receive follow up screenings at least every three (3) years thereafter. A psychological screening should at a minimum consist of a questionnaire and, if necessary, consist of an in-person evaluation.

3) Require follow up psychological screenings after any critical incident (see p. 28) before a law enforcement officer returns to active duty. If a screening after the initial employment screening determines a law enforcement officer is not fit for duty at that time, but their fitness for duty could be restored, he or she will be eligible for short-term disability. If any screening after the initial employment screening determines a law enforcement officer is not fit for and will never be able to return to active duty, that law enforcement officer will be eligible for a disability retirement.

Beginning immediately upon employment, law enforcement officers are eligible for disability benefits if the officer "becomes incapacitated for duty as the natural and proximate result of injuries incurred while in the actual performance of his or her duties."⁵

4) Require the Basic Law Enforcement Training (BLET) course prior to performing duties requiring certification for personnel first certified on or after January 1, 2025.

The Sheriffs' Standards Commission currently allows deputies to hold a probationary certification for twelve months after their appointment before completing BLET. During this probationary period, a sheriff has discretion in the types of responsibilities and job functions he or she allows that deputy to perform.

Sheriffs may require a new deputy to participate in on the job training or a field training program during this period or may assign them only civilian duties. It is important to note, before a sheriff can issue a firearm to a deputy with a probationary certification, the deputy must successfully complete firearms qualification as specified by 12 NCAC 10B. 0204 and review department policy on use of force.⁶

5) Require the Criminal Justice Standards Commission to adopt a rule that would not allow certification of an applicant or allow a law enforcement officer to maintain certification if he or she has a criminal history reflecting the commission or conviction of a combination of four or more class A or B misdemeanors regardless of the date.

⁵ G.S. § 128-27(c)(2).

⁶ 12 NCAC 10B .2101.

Currently, both Commissions review an applicant's criminal history before certification. Both Commissions consider commission or conviction of any of the following to disqualify an applicant from certification:⁷

- a. A felony,
- b. A crime for which the punishment could have been imprisonment for more than two years,
- c. A crime or unlawful act defined as a Class B misdemeanor⁸ within five years from the date of appointment or employment,
- d. Four or more crimes or unlawful acts defined as Class B misdemeanors regardless of the date of conviction or commission, or
- e. Four or more crimes or unlawful acts defined as Class A⁹ misdemeanors except the applicant can be employed if the last conviction or commission occurred more than two years prior to the date of appointment or employment.

The Sheriffs' Standards Commission already has a rule in place which does not allow the certification of an applicant who has committed or been convicted of a combination of four or more class A or B misdemeanors.¹⁰

Background Investigation of Applicants

When an agency submits an application for certification as a law enforcement officer in North Carolina, the Sheriffs' Standards Division and Criminal Justice Standards Division¹¹ require the applicant to sign an Authorization for Release of Information. This allows a Division investigator to request and obtain employment information from any prior employer of the applicant (whether a law enforcement agency or not) in order to determine if anything in the applicant's employment history should prevent their certification as a law enforcement officer.

However, even with that waiver, sometimes former employing law enforcement agencies are hesitant to share some information in personnel records with Division staff or with a hiring agency. Agencies may fear violation of personnel or public records laws for releasing too much information. Incomplete or missing information prevents Division staff or a hiring agency from being able to conduct a thorough background investigation regarding whether an applicant should be certified and/or hired.

In addition, failure of a former employer to share previous employment information with a hiring agency could (1) prevent a good candidate from being hired because an agency fears what they cannot discover, but what does not exist about an applicant or (2) allow an unworthy candidate to be hired because a former employer feels bound by the law not to share information that should prevent a person from being hired.

Failing to share this critical personnel information could lead to what are frequently referred to as "gypsy" law enforcement officers. "Gypsy" law enforcement officers are those who are hired at an agency, engage

⁷ 12 NCAC 10B.0307, 12 NCAC 09B.0111.

⁸ Class B misdemeanors are defined in the "Class B Misdemeanor Manual" published by the North Carolina Department of Justice.

⁹ Class A misdemeanors are defined in the "Class B Misdemeanor Manual" published by the North Carolina Department of Justice.

¹⁰ 12 NCAC 10B.0307(b)(4).

¹¹ Hereinafter, the Sheriffs' Standards Division and Criminal Justice Standards Division will be referred to as "the Division(s)".

in some misconduct, are allowed to resign, and then move on to be employed at another agency without the hiring agency being aware of the previous misconduct.

To avoid this, law enforcement agencies should be forthcoming with any and all personnel records and any other records regarding misconduct, discipline or reprimands, internal investigations, and commendations to the staff of the Divisions and hiring agencies.

The Association recommends eliminating “gypsy” law enforcement officers by:

- 1) Legislative enactment of a new statute which mandates that an applicant for certification or a lateral transfer shall execute a waiver on a form provided by the Divisions that requests and authorizes the release of all personnel records and any other records, including investigative files (*i.e.* internal affairs investigative files) in the possession of a North Carolina criminal justice agency where the applicant has been employed.**
Lateral transfers occur when a certified law enforcement officer transfers from one law enforcement agency to another. Lateral transfers will be discussed in more detail later in this report.
- 2) Legislative enactment of a new statute which mandates that agencies releasing such records in good faith shall not face civil or criminal liability for production of those records to an applicant’s or lateral transfer’s hiring agency or to the Divisions.**
- 3) Addition of new Commission forms to ensure agencies are requesting and providing personnel records and other records in the hiring process.**
 - a. Form 1 should require signature by an individual at the hiring agency certifying that as part of the hiring process, the agency requested and obtained the personnel file/personnel information from every previous criminal justice agency with whom the officer has been employed; and**
 - b. Form 2 should require that an individual from any North Carolina criminal justice agency where an officer was previously employed certify that the agency provided all personnel files/personnel information to the hiring agency.**
- 4) Making the individual officer who signs each form accountable to the Commissions, by requiring his or her certification that he or she provided the entire personnel file/personnel information for the identified law enforcement officer or applicant.**
- 5) Legislative enactment of modifications to G.S. § 153A-98(e) for county employers, G.S. § 160A-168(e) for city employers, and G.S. § 126-24 for state employers to ensure agencies can turn over personnel files without concern for potential criminal sanctions.**

Consistency of Report of Separation Forms

Currently, the forms entitled Report of Separation for the Commissions are similar but there are some differences.¹² The Commissions need to have access to the best and most complete information about an

¹² The Sheriffs’ Standards Commission form number is F5. The Criminal Justice Standards Commission form number is F5B.

officer who leaves employment or is terminated from employment with any law enforcement agency in the state.

Therefore, the Association recommends the Commissions adopt an identical Report of Separation form which at a minimum contains the following information and/or questions:

- 1) **Basic employment information (i.e., name, separating agency, date of separation, etc.).**
- 2) **Reason for separation (i.e., dismissal, resignation, retirement, death, etc.).**
- 3) **Whether the separation was the result of alleged criminal conduct or an alleged rule violation.**
- 4) **Whether the agency was aware of any investigation within the previous eighteen (18) months concerning potential criminal action or potential misconduct by the law enforcement officer.**
- 5) **Whether the agency was aware of any substantiated allegation of untruthfulness regarding the law enforcement officer.**

Truthfulness of Law Enforcement Officers – Accomplished in Session Law 2021-138 (Senate Bill 300) and Session Law 2021-137 (House Bill 536)

Giglio information is generally considered to be any information which is material or relevant to the credibility (*i.e.* truthfulness or untruthfulness) of any government witness in a criminal prosecution, including a law enforcement officer. The identification of this material as Giglio information was the result of a series of court cases including the 1972 case of Giglio v. United States.

Most often it is a judge or a district attorney who makes the initial determination that a law enforcement officer committed a Giglio violation and he or she will issue an order or write a letter outlining the dishonesty at issue. For example, if an officer has been untruthful in an administrative investigation or hearing or has a credible allegation of misconduct which reflects on their character for truthfulness or credibility, that is a Giglio violation which would likely be outlined by a judge in a court order or by a district attorney in a letter.

Giglio violations or information must be disclosed to defendants in a criminal prosecution. To maintain the integrity of the law enforcement profession and eliminate those who cannot be trusted to tell the truth, it is necessary as a profession to determine the identity of any law enforcement officer with a Giglio violation. Currently, there is no requirement that law enforcement officers who have been notified of a Giglio violation report that to the Commission.

As a profession, we expect witnesses and citizens to tell the truth. Therefore, the Association believes as a profession, we should not tolerate those amongst us who are unable to do the same. Any law enforcement officer who is issued a Giglio violation should be required to disclose that violation to the Commissions.

The Association recommends that:

- 1) **Legislation be enacted which will require an officer or an officer's agency to disclose any Giglio violation to the officer's certifying Commission when the officer or the agency is notified in writing of the violation. Notification to the certifying Commission must be given**

- a. Upon application, lateral transfer, or separation; and
 - b. Any other time written notification is received.
- 2) **Legislation be enacted requiring the Commissions to adopt an administrative process for a law enforcement officer who gives notice or whose agency gives notice to the Commissions of an officer's Giglio violation. The administrative process should comply with Chapter 150B, Article 3A.**

Upon notification, the officer would be afforded due process through an administrative hearing, if requested by the officer, in accordance with Chapter 150B, Article 3A of the North Carolina General Statutes. If the officer is determined to have committed a Giglio violation, then his or her certification would be permanently revoked by their certifying Commission.

Authority of the Commissions to Decertify Officers

There are five states that do not allow for decertification of law enforcement officers failing to meet or maintain minimum standards (or for any other reason) including: California, Massachusetts, Hawaii, Rhode Island, and New Jersey. However, in North Carolina, the Commissions are authorized to decertify officers who fail to meet or maintain minimum standards. North Carolina's grant of authority to the Commissions to decertify officers for failure to meet or maintain minimum standards allows the State to prevent individuals who do not honor the law enforcement profession from coming into or remaining in the ranks.

Actions such as (1) materially misrepresenting information in the certification application process, (2) committing or being convicted of certain criminal offenses while certified or prior to certification, and (3) committing an act or acts that show an officer does not have the good moral character required of a law enforcement officer commonly result in the decertification of officers in North Carolina. If an officer is notified their certification is under investigation for these or any other rule violation of minimum standards, the officer will proceed through an investigative process before the appropriate Commission.

After the investigation and preliminary probable cause determination by the Probable Cause committee of the appropriate Commission, an officer whose certification is in jeopardy is given an opportunity to present his or her case to an administrative law judge during a hearing in the North Carolina Office of Administrative Hearings pursuant to Chapter 150B, Article 3A, of the North Carolina General Statutes. The officer is given an opportunity to be represented by counsel, to testify, cross examine witnesses, and to present evidence during the hearing, as are the Commissions. After the hearing, the judge makes a proposed decision to the appropriate Commission regarding the officer's certification and that proposal is reviewed and considered by the respective Commission. The judge's proposal will either be adopted or modified to reflect the final decision of the Commission. If the officer is not satisfied with the Commission's decision on his or her certification, the officer may continue to appeal through the North Carolina court system.

The Association's and Commissions' interpretation of the law is that hearings conducted on behalf of the Commissions are governed by Chapter 150B, Article 3A, but there is some confusion about this largely due to General Statutes that are not written precisely. As outlined above, in Article 3A hearings, a judge is assigned by the N.C. Office of Administrative Hearings to be the fact finder for the case, and the judge makes a proposal to the appropriate Commission regarding an officer's certification. Pursuant to G.S. § 150B-40(e), the Commissions retain the authority to make the final decision regarding a law enforcement officer's certification based on the findings of fact, conclusions of law, the judge's proposal on what sanction should be imposed, and based upon the recommendation of counsel for the Commission and

counsel for the officer. It is critical that the Commissions retain the authority to certify and decertify those seeking to enter and remain law enforcement professionals.

The Association requests that legislation be enacted to precisely classify the Commissions as Chapter 150B, Article 3A, agencies in the North Carolina General Statutes.

Creation of and Access to a Searchable Database of Decertified Law Enforcement Officers – Accomplished in Session Law 2021-138 (Senate Bill 300) and Session Law 2021-137 (House Bill 536)

The Commissions already participate (by providing names of decertified officers) in the National Decertification Index (NDI) through the International Association of Directors of Law Enforcement Standards and Training (IADLEST). The benefit of this index is access to certification information for officers who apply to work in a North Carolina agency after being certified in another state. Access to this information is useful to the Commissions in evaluating the application of an out-of-state applicant.

The NDI is not accessible to the public, but law enforcement agencies may request and be provided access by the Division directors to utilize during the hiring process. NDI is accessible on the IADLEST webpage at <https://www.iadlest.org/our-services/ndi/about-ndi> and the Division directors are actively working to include a link to the NDI on the N.C. Department of Justice webpage by the end of 2020. All states that allow for decertification of officers, except the state of Georgia, participate and enter decertification information into this index. As previously noted, five states do not allow for decertification of officers: California, Massachusetts, Hawaii, Rhode Island, and New Jersey.

In an effort to create more transparency regarding the decertification of North Carolina law enforcement officers, the Commissions voted to support the creation of and participation in a publicly searchable database of decertified North Carolina law enforcement officers. Unlike NDI, this database of decertified North Carolina officers would be accessible to both the public and law enforcement agencies and would be searchable by an individual's name. The Division directors are actively working to create and make this database accessible on the North Carolina Department of Justice webpage by the end of 2020.

The Association recommends that:

- 1) **The Divisions create and maintain a searchable database of decertified North Carolina officers.**
- 2) **The NDI be made accessible to the public.**
- 3) **The NDI be used by the Divisions when processing all applications for certification and lateral transfers.**

Records of Arrest and Prosecution Background (RapBack) Program – Accomplished in Session Law 2021-138 (Senate Bill 300)

The Rap Back program was developed by the Federal Bureau of Investigation (FBI) and allows authorized government agencies, such as the North Carolina State Bureau of Investigation (SBI), to store, maintain and continuously compare fingerprints of certain individuals (e.g. certified law enforcement agency personnel) to criminal history record information throughout the United States.

North Carolina should implement the Rap Back Program. The SBI should manage the program and work with the Commissions to ensure necessary statutory and rule changes are implemented to begin utilizing the program. The Commissions voted to implement the Rap Back program for certified law enforcement agency personnel currently holding certification. Use of the Rap Back Program will allow the Divisions to

quickly and efficiently identify when certified law enforcement agency personnel have been arrested in any state.

The Association recommends enactment of legislation to implement the Rap Back Program and to make it applicable to all certified personnel of law enforcement agencies in North Carolina.

Detention Officer and Telecommunicator Certification Course Task Analyses – Accomplished in Session Law 2021-180 (Senate Bill 105)

Funding has recently been secured for job task analyses for the Detention Officer Certification Course (DOCC) and Telecommunicator Certification Course (TCC). The most recent job task analyses for these courses was completed in 2003 and 1998, respectively. Both of these courses are long-overdue for review and revision. That process is now underway.

The Association recommends that the Sheriffs’ Standards Division begin and complete a job task analysis for both of these training programs. Detention officers and telecommunicators certified through the programs perform vital roles in the criminal justice system.

Use of Force

Governor Roy Cooper’s Executive Order 145 created the Center for the Reduction of Law Enforcement Use of Force to be housed in and managed by the SBI. The name as it stands in the Executive Order implies there is a need for a reduction in the use of force by North Carolina law enforcement officers; however we do not even have a uniform definition of the term “use of force”. We cannot truly know whether there should be a call for reducing the use of force by law enforcement until all law enforcement agencies operate under the same definition and data can be collected on those uses of force.

In fact, in examining what everyone would agree is deadly force (*i.e.*, officer use of a firearm), current data collected by the SBI shows that in cases where a final disposition was reported to the SBI, of approximately 468 officer involved shooting investigations conducted from 2010 to present, none of the officers were found to have committed a violation of North Carolina criminal law. Ultimately, across all 100 counties, District Attorneys only sought criminal charges against four officers. Two of those cases were presented to a grand jury and no true bill was returned, one case resulted in a jury trial for voluntary manslaughter where the officer was found not guilty, and in one case, an officer was tried for voluntary manslaughter, the jury deadlocked, and the district attorney ultimately dismissed the case.

Therefore, the Association recommends renaming the Center to more accurately reflect its mission as “The Center for Analysis of Law Enforcement Use of Force”.

While the work of the Center may ultimately reflect a need for reducing use of force by law enforcement, there is no data to support that need in North Carolina before the work of the Center is undertaken.

In furtherance of efforts to understand law enforcement use of force incidents and patterns in law enforcement use of force, the Association supports the following executive order mandates regarding the Center:

- 1) collection and analysis of data regarding use of force,

- 2) promotion of transparency and understanding between law enforcement and the public by reaching out to communities of color and diverse populations, and
- 3) collaboration with stakeholders to advance the Center.

The Association:

- 1) **Supports the development of additional training for law enforcement officers regarding use of force; and**
- 2) **Requests the Executive Order be amended, and legislation be enacted to require the North Carolina Justice Academy, and not the Center, to be the entity required to create this training.** Currently, the North Carolina Justice Academy creates almost all required law enforcement training for North Carolina law enforcement officers. This change would allow that practice to continue.

In addition, to ensure uniform collection and reporting on use of force, a statewide, uniform definition of “use of force” and a statewide, uniform use of force policy is necessary. Use of force is addressed in the North Carolina Law Enforcement Accreditation (NCLEA) program’s draft guide. In Chapter 5 of NCLEA’s draft standards there are requirements that accredited agencies have a policy addressing use of force and use of deadly force, in addition to other requirements for use of force documentation and reporting.

The Association recommends that:

- 1) **Legislation be enacted requiring the North Carolina Attorney General to develop a uniform definition of use of force and a model policy on use of force, both of which must be approved by the North Carolina Sheriffs’ Association and the North Carolina Association of Chiefs of Police before being finalized.**
- 2) **The Center collect data in areas where no data currently exists including, but not limited to:**
 - a. **when law enforcement officers complied with the law on use of force;**
 - b. **uses of deadly force by law enforcement (aside from use of a firearm);**
 - c. **actions of the person which caused the law enforcement officer to initiate use of force;**
 - d. **situations in which jail staff saved the life of an inmate by providing emergency medical services in the jail; and**
 - e. **situations in which jail staff recognized an inmate’s need for emergency medical care and arranged or provided transportation to an emergency medical facility.**

Chokehold and Duty to Intervene and Report Policies

Requiring accreditation through NCLEA would set uniform policy standards for subject matters which are currently of critical concern to the public and law enforcement agencies. Some of those areas are traditionally considered high-liability areas such as use of force, firearms, and vehicle pursuits. However, it is not only those traditional high-liability areas that should concern law enforcement in light of the recent civil unrest and public discord.

While chokeholds gained particular attention after the murder of George Floyd, the Association reviewed the topic and found that the terms chokeholds, neck restraint, vascular lateral neck restraint and other similar terminology are not subject to a precise definition. In any case, any use of force which could be categorized by one of these terms should be analyzed by existing use of force language in G.S. 15A-401(d).

The Association recommends that the following specific policy language regarding the duty to intervene and report be adopted by:

- 1) All law enforcement agencies in North Carolina; and [Accomplished in Session Law 2021-138 (Senate Bill 300) and Session Law 2021-137 (House Bill 536)]**
- 2) The North Carolina Law Enforcement Accreditation (NCLEA) Program.**

Duty to Intervene and Report

Officers have a duty to intervene when necessary to prevent or stop another officer from using a level of force that the officer knows is excessive under the existing circumstances.

Officers shall intervene when the officer observes any other officer treating anyone in any manner that is inconsistent with law or agency policy.

Any officer who is required to intervene, also has a duty to report that intervention. Notification shall be made to a supervisor, documented in writing, and submitted through the Chain of Command or an established internal affairs process.

Failure to report as required may result in disciplinary action up to and including dismissal, and possible criminal charges.

Early Warning Systems – Accomplished in Session Law 2021-138 (Senate Bill 300)

Early warning systems are designed to alert an agency to actions and behaviors of an officer which should be monitored or documented. These systems are data-based tools that help agencies manage personnel by intervening to correct performance. Early warning systems may monitor things such as incidents of use of force, vehicle collisions, citizen complaints, firearms discharge, and a number of other things.

In some circumstances, events occurring in an officer's personal or professional life could affect decision-making skills important to a law enforcement officer. An early warning system could alert an agency to an officer's need for counseling regarding these issues. In addition, an early warning system could alert an agency to a law enforcement officer needing remedial training in certain areas.

Early warning systems are designed to address officer behaviors before they become a potential public safety issue or an issue which may require discipline or termination of the officer. Early warning systems can raise standards of performance, create accountability, and improve the quality of law enforcement services to the public.

The Association recommends implementation of early warning systems in all law enforcement agencies. Early warning systems are mandated in the NCLEA draft program guide in section 3.08.

North Carolina SBI Investigation of Officer Involved Shootings

The Association believes it is important that the general public understand the components of an officer involved shooting investigation and have confidence that an impartial criminal investigation takes place for an officer who is involved in a shooting. North Carolina already has a system which can be trusted.

The Association recommends that the North Carolina Justice Academy create a video regarding officer involved shootings which can be distributed to the public via social media and other outlets. This video should include information from the SBI explaining how officer involved shootings are handled. Critical to that explanation is the fact that when an officer is involved in a shooting, sheriffs and other law enforcement agencies call upon the SBI to conduct an independent criminal investigation to determine if the officer's action complied with law. The agency conducts a separate administrative investigation to determine if the law enforcement officer followed internal agency policy and procedures. When the SBI completes their investigation, a final copy of the investigative file is turned over to the local district attorney for review and a decision regarding whether to proceed with criminal charges.

Furthermore, the Association recommends that when possible a representative from the SBI, local law enforcement and the district attorney address the public together after an officer involved shooting as soon as practical. It is important for the SBI, local law enforcement, and local district attorneys to continue to cooperate in officer involved shooting cases. This will serve to present one message regarding the results of any investigation and potentially eliminate confusion in the public about the resolution of the case.

Mandatory Field Training Officer Program

There are numerous benefits to a field training program. Some law enforcement agencies in North Carolina already require newly hired officers to participate in a field training program at their agency before being allowed to work independently.

The field training program typically places a "rookie" officer with a field training officer (FTO) who has several years more experience. The program is designed to continue training a new law enforcement officer after they complete BLET and to provide practical application of much of the material learned in BLET. An FTO can provide invaluable hands-on field training to a new law enforcement officer. In addition, a field training program provides an FTO time and circumstances to evaluate the skills a new officer has by allowing them to interact with the public on calls for service and in traffic stops, for example, all while measuring their competency as a new law enforcement officer. During this time of observation and evaluation, an FTO will have time and opportunity to identify any areas of concern with a new officer. For example, an FTO could identify the need for a new law enforcement officer to receive more driving training or to improve his or her communications skills before recommending he or she be allowed to work unsupervised.

The Association recommends that in order to be accredited through the North Carolina Law Enforcement Accreditation Program, field training programs be required for law enforcement agencies in North Carolina. The programs should be formalized, documented, and uniform across

the State. Currently, sections 2.09 and 2.10 of NCLEA’s draft program guide address field training programs.

Communication with the Public Regarding the Law and Law Enforcement Practices

The Association believes that law enforcement should continue to improve communication with the public regarding law enforcement interactions. The North Carolina Justice Academy has produced videos in the last several years for training regarding how law enforcement should interact with various populations, including autistic individuals and those in the deaf and hard of hearing community. However, these videos are designed to teach officers how to interact with the public, not how the public should interact with law enforcement.

Some agencies have created their own videos regarding how the public should interact with law enforcement in various scenarios. Those may or may not have been widely distributed. The North Carolina Division of Motor Vehicles included mandatory instruction in driver training courses regarding how a driver should interact with law enforcement during a traffic stop. However, because that information was just recently added to the curriculum, there is a large segment of the population who may not have received it.

Therefore, the Association recommends that:

- 1) The North Carolina Justice Academy prepare videos to distribute via social media and other outlets about common law enforcement encounters and what the general public should expect and should do during encounters such as traffic stops, arrests, etc.; and**
- 2) All North Carolina high school students be required to view these videos by the beginning of their junior year.**

Best-Practices for Law Enforcement Recruitment – Accomplished in Session Law 2021-138 (Senate Bill 300)

The Association believes law enforcement would benefit from a professional analysis of law enforcement recruiting as it relates to diverse populations. The analysis should result in a guide for law enforcement agencies outlining best practices in law enforcement recruiting.

Law enforcement agencies want to recruit a professional workforce made up of the most qualified individuals regardless of race, gender, ethnicity, or sexual orientation. Agencies also realize the difficulty in recruiting from communities of color. The Association is hopeful a best-practices guide for law enforcement recruiting will positively impact their recruiting methods and ability to recruit a more diverse workforce. **The Association recommends that the Commissions, in consultation with appropriate professionals, design a best-practices guide for law enforcement designed to recruit a diverse workforce.**

Recommended Changes Requiring Funding

Basic Law Enforcement Training (BLET)

North Carolina currently requires a basic training course for entry level law enforcement officers that is a minimum of 640 hours. Many are longer. This training is delivered in a variety of formats depending on the subject matter, but includes class lecture, as well as scenario-based training, practical exercises, and

group discussion. BLET is currently offered at 65 sites across the State, including community colleges and at some of the larger law enforcement agencies that offer in-house programs for their recruits.

It is important to note that BLET is the minimum amount of training required to become a law enforcement officer. Because these are minimum standards, any school or agency delivering the course may add more hours or topics to the curricula if they choose. In addition to BLET, some agencies require additional training hours for new officers in the form of a formal field training program or more informal probationary periods of employment.

In the current BLET curriculum, students must take a minimum of thirty-six (36) written exams covering each of the thirty-six (36) topics of instruction in BLET and a State exam to receive certification as a law enforcement officer. They must pass each of those exams with a minimum score of seventy (70). If a student fails to meet the minimum score of seventy (70) on a topic of instruction, they are allowed one re-test. They may retest in no more than four topic areas. If a student fails a fifth topic area or is unable to make a minimum score of seventy (70) in all topic areas, they are dismissed from the BLET program and will not be certified as a law enforcement officer. In addition to passing the written examinations for each subject area, students are also required to show proficiency in practical skill exercises and law enforcement techniques throughout the topics of study. If students cannot demonstrate satisfactory proficiency, instructors will not allow them to continue in BLET.

BLET students must pass a written State examination with a minimum score of 70. This state test is comprehensive and covers all thirty-six (36) topics of study in a six (6) unit examination. Students must meet the minimum score on each of the six (6) units. If their minimum score is below seventy (70) on one or two of the units, a student will be given an opportunity for a retest within sixty (60) days of the original examination. If the student scores below the minimum score on more than two units, they will not be allowed a retest and will not receive certification as a law enforcement officer.

While testing is a crucial component of measuring competency, it is important to remember that many aspects of a law enforcement officer's job prove difficult to measure in a classroom. For example, it is difficult to measure a trainee's reaction to a person suffering a mental health crisis, a crowd of people protesting an emotional issue and exercising their first amendment rights, or an individual who is drug impaired and brandishing a weapon. Those situations can be simulated, but in a real-life scenario, events are not scripted and are unpredictable. Events are driven by emotion and facts that cannot be recreated in a classroom setting. While there are methods which can be and are being taught in the classroom to help officers know how to respond in those moments, no number of hours in the classroom could ever fully prepare them for the actual event.

In an effort to evaluate and improve current BLET curricula, in July 2019, a job task analysis was conducted regarding the current BLET curriculum. The job task analysis was designed to identify tasks expected of an entry-level law enforcement officer in North Carolina. To begin the job task analysis, a survey was conducted of law enforcement officers across the State.

Consequently, the North Carolina Justice Academy, including instructors and subject matter experts, began to review and revise all 36 lesson plans which make up the current BLET curriculum in light of the results of the job task analysis. As a result of the subsequent review and revision, Commissioners from both Commissions, along with the BLET Advisory Group, the School Directors Advisory Group, and the Job Task Analysis working group have been provided draft lesson plans for review.

Implementation of the new BLET curriculum is slated to begin in January 2022 with pilot testing. Statewide implementation is tentatively set for January 2023. The new BLET will consist of approximately 700 hours

and will continue to train in those fundamental areas of study necessary for the education of a new law enforcement officer.

Because great strides are currently underway to update and improve upon North Carolina's existing BLET, a unique opportunity exists to recommend changes while modifications to the curriculum are on-going.

Therefore, the Association recommends that:

- 1) The Commissions study the current BLET delivery model and identify ways to:**
 - a. Improve the lack of consistency of delivery of the material by instructors.**
 - b. Improve the quality of instruction across the State.**
 - c. Increase enrollment standards so that each class has a sufficient number of students to ensure the quality of instruction.**

The Association recognizes the benefit of consistent and uniform delivery of BLET. Therefore, the new delivery of BLET should be provided during an in-residence program. The North Carolina State Highway Patrol currently runs their academy as an in-residence program. This allows greater control over curriculum delivery, consistency in delivery, and more scenario-based training which the Association believes is crucial to improving law enforcement training and professionalism.

The lessons provided by an in-residence BLET program will not only come from the written curriculum, but from daily experiences. Cadets will learn to communicate with individuals who are from different parts of North Carolina or the country, who may be of a different ethnicity, a different race, or a different socio-economic background. Cadets will live with people who do not look like them, talk like them, or may not have grown up in an environment similar to theirs. They will be working together in formation, learning to depend on each other as backup during traffic stops, execution of search warrants, and generally learning to rely on each other for professional support and assistance. This will help teach cadets how to collaborate with, communicate with and accept individuals from different walks of life and to become officers who can model that behavior in their agencies. An in-residence BLET will produce not only a better tactically trained officer, but an officer who is better equipped to communicate with and understand all communities in North Carolina, not just their own.

Furthermore, an in-residence BLET program will allow the North Carolina Justice Academy to maintain greater control over the quality and consistent delivery of instruction. BLET instructors at the N.C. Justice Academy should be full-time employees of the North Carolina Justice Academy. These instructors should be required to be general and/or specialized instructors certified through the Criminal Justice Standards Commission.

Additionally, the Association recommends that:

- 1) During the current review and revision of BLET, the North Carolina Justice Academy incorporate:**
 - a. The topic of crisis intervention training (CIT) into the BLET curriculum,**

- b. **Civil unrest training into the BLET curriculum,**
 - c. **More scenario-based training throughout all topic areas of the BLET curriculum to give cadets more real-world, practical experience and concept application.**
- 2) **The Sheriffs' Standards Commission evaluate the BLET and Detention Officer Certification Course (DOCC) curriculum to identify duplicative topics in the material and study the feasibility of creating an additional DOCC curriculum which does not contain the duplicative material. Completed with the assistance of North Carolina Justice Academy staff.**

If a sheriff has an employee he or she would like to certify both as a deputy sheriff and a detention officer, this curriculum will allow the sheriff to send the student first to BLET and upon completion of BLET, then to a shortened DOCC school. The shortened DOCC school would only exclude duplicative material found in BLET. Ultimately, a sheriff could have a dually certified deputy sheriff and detention officer upon completion of this shortened, but nonetheless comprehensive curriculum.

Mandatory In-Service Training (MIST)

Just like lawyers, accountants, and numerous other professions, law enforcement officers are required by the State to complete yearly continuing education training after being certified. In the law enforcement profession, this is called mandatory in-service training (MIST). This training is in addition to any that is required or voluntarily offered by an officer's individual agency. Detention officers and telecommunicators are also required to participate in yearly MIST.

Law enforcement officers are required to receive a minimum of twenty-four (24) credits¹³ of MIST each year with between twelve (12) and fourteen (14) credits mandated by statutes and administrative rules to cover certain topics such as firearms, domestic violence, juvenile minority sensitivity, and juvenile justice.¹⁴ Though not required by statute, since 2005 the Commissions have mandated that all officers receive four (4) credits of legal update training each year.

For the remainder of the required credits, the Joint In-Service Training Committee, made up of sheriffs, chiefs of police, community college system representatives, and others recommends topics to the Commissions to consider selecting for training. Once those topics are approved by the Commissions, lesson plans are developed by the North Carolina Justice Academy and made available to law enforcement.

Law enforcement officers must demonstrate proficiency in each MIST course taken by passing a written examination with a minimum score of seventy (70). A law enforcement officer may retest one time and if he or she fails the retest, must retake the course before retesting again.

Between 2005 and 2020, a little over twenty-five (25) percent of the MIST topics addressed issues that are currently at the forefront of discussion involving law enforcement training including: ethics, juvenile minority sensitivity, stress awareness and mental illness, community dissent, decision making, equality in policing, and interactions with communities of color, and communication with special populations, such as individuals with mental illness, autism, and the deaf or hard of hearing.

¹³ "Credits" is the term used in the N.C. Administrative Code. A credit is essentially equivalent to an hour.

¹⁴ G.S. § 17C-6(a)(14), G.S. § 17E-4(a)(11), G.S. § 114-12.1, 12 NCAC 10B .2005, 12 NCAC 09E .0105.

The Rules Review Commission (RRC) requires a yearly change to the North Carolina Administrative Code to reflect the next year's MIST topics. Because of the cumbersome and lengthy rule making process, the topics and number of credit hours assigned to each topic must be submitted to the RRC for approval in a proposed rule approximately eighteen months in advance of the actual lesson plan development.

Neither the topics, nor the number of credits can be changed once they are approved for publication in the Code. This limits the ability of the Commissions to ensure training is relevant and current, and to respond to ever-changing and emerging needs in law enforcement training. For example, topics for 2021 are already chosen and the rule has already been approved by the RRC. Therefore, even though topics such as de-escalation and civil unrest might be timely instruction for law enforcement officers in 2021, they cannot be included in mandatory training until at least 2022 because of the bureaucratic, mandatory, cumbersome, and lengthy rule-making timeline. In addition, if assigned credits need to be adjusted to allow for more training in an already approved topic area, they could not.

Therefore, the Association recommends that:

- 1) **Legislation be enacted which would exempt selection of MIST topics for all law enforcement officers, detention officers, and telecommunicators from the rules review process in order to allow the Commissions to respond to immediate or emerging needs in law enforcement training. Accomplished in Session Law 2021-138 (Senate Bill 300)**
- 2) **Legislation be enacted which requires the Commissions to mandate in-service training in ethics, mental health for law enforcement, juvenile minority sensitivity, domestic violence, community interaction, use of force, and duty to intervene and report, periodically as determined by the Commissions. Accomplished in Session Law 2021-138 (Senate Bill 300).**
- 3) **The Commissions amend the administrative code to clarify that the Commissions must specify which MIST courses may be delivered via online delivery, which must be delivered via in-person delivery, or both.**
- 4) **The North Carolina Justice Academy incorporate relevant scenario-based exercises throughout MIST lesson plans for law enforcement officers, detention officers, and telecommunicators.**

What officers learn in MIST they should be required to practice as part of their training. This will reinforce concepts learned in MIST by providing practical application.

- 5) **Funding be provided for adequate North Carolina Justice Academy staff to create mandatory in-service lesson plans specific to the career and professional development of detention officers and telecommunicators.**

Currently, the North Carolina Justice Academy only employs one full-time lesson plan developer for detention officer courses and one full-time lesson plan developer for telecommunicator courses.

Review of General and Special Instructors to Maintain Quality Training

The Association believes that training received is only as good as the material and the instructor. Instructors who are simply reading off the script are not giving their students as much quality as an instructor who spends time preparing for class by reviewing their material and preparing for the lecture and practical exercises.

In North Carolina, both BLET and MIST are taught by certified instructors. Lesson plans for both are designed and reviewed by the North Carolina Justice Academy staff. The lesson plans are written and formatted to be delivered within a certain number of hours and to meet certain objectives. To develop and teach these courses, an instructor must attend a two-week general instructor training course and pass a State exam. Instructors are issued probationary status for the first twelve months and must have eight hours of teaching (which meet a minimum score) evaluated by another general instructor before receiving full general instructor status. Certain subjects such as firearms and driver's training, among others, may only be taught by specialized instructors. Specialized instructors must complete specialized training beyond that required by the two-week general instructor training course and pass an additional State exam.

To maintain general and specialized instructor status, instructors must also meet certain continuing education requirements. General instructors must take a one-hour online refresher course yearly. Specialized instructors have additional requirements. Specialized instructors must teach twelve hours in their specialized area of expertise within three years of receiving their specialized certification, show proof of completion of all Commission issued instructor updates, and reapply for renewal of their specialized certification within three years of their initial certification.¹⁵ Additionally, depending on their area of specialization, specialized instructors must pass additional tests before applying for renewal.¹⁶ For example, a specialized firearms instructor must score a minimum of ninety-two (92) on both day and night firearms qualifications courses and specialized physical fitness instructors must pass the Police Officer Physical Aptitude Test (POPAT).¹⁷ Both general and specialized instructors must submit proof of compliance to the Criminal Justice Standards Division.

The Association recommends that:

- 1) The Criminal Justice Standards Commission adopt a rule which requires an in-person evaluation of general and specialized instructors who teach more than four hours in a calendar year to occur at least once every three years. All instructors who teach more than four hours in a calendar year would undergo an in-person evaluation, but the evaluations would occur on a random basis.**
- 2) Division staff who are certified general and specialized instructors must be utilized to conduct the random evaluation.**
- 3) Funding be provided to the Criminal Justice Standards Division for additional staff necessary to initiate implementation of random evaluation of certified instructors.**

If, after random review by Division staff, an instructor does not meet the minimum score required by the rule established by Criminal Justice Standards Commission, then he or she would be required to complete remedial training for the instructor skills in which they were deficient. At the first course taught by that instructor after remedial training he or she would again be evaluated by staff from the Division. This additional measure of instructor evaluation assures North Carolina will continue to deliver law enforcement training which meets the highest standards.

North Carolina Law Enforcement Accreditation (NCLEA) Program

NCLEA came into being as an idea generated by Bill Hollingsed, former Chief of Police at the Waynesville Police Department and Chairman of the Criminal Justice Standards Commission, and current Executive

¹⁵ 12 NCAC 09B .0305

¹⁶ Id.

¹⁷ Id.

Director of the North Carolina Association of Chiefs of Police. The Commission convened a working group consisting of sheriffs, police chiefs, and other law enforcement professionals with a goal of creating an affordable statewide accreditation program available to all law enforcement agencies. It is designed to be administered by the staff of the Divisions.

The NCLEA working group designed this program with the intent that it enhance community perception and awareness of local law enforcement agencies and increase law enforcement professionalism. This accreditation program is intended to ensure that agencies are: (1) considering and addressing critical issues; (2) developing policies and procedures to address these issues; and (3) implementing systems to identify and correct problems within. The current draft NCLEA program guide requires that agencies have policies on topics such as use of force, chokeholds, duty to intervene and report on excessive use of force, vehicle pursuits, early warning systems, field training programs, and professional standards and conduct, among others.

Pursuant to the NCLEA draft guidelines, agencies would have twenty-four (24) months to implement these policies and to set up accreditation files before an agency site visit. The site visit would be conducted by the NCLEA Program Manager and an assessment team comprised of North Carolina law enforcement professionals. This site visit would determine whether the agency became successfully accredited through NCLEA. To maintain accreditation, agencies would have yearly compliance checks and a regular review of agency policy and procedure. Each accredited agency would have a site visit every three (3) years.

The cost to become a member agency would vary based on number of employees. Proposed initial fees for the smallest agencies would be \$450 and continuing membership would be a maximum of \$450 annually. For the largest agencies in the state, proposed initial fees would be \$1150 and continuing membership would be a maximum annual fee of \$1150.

Funding is not currently available for this program. However, the Divisions are applying for a one-time grant through the North Carolina Governor's Crime Commission for initial staff funding for implementation and management of the program. However, a permanent funding source from the General Assembly is necessary to allow this important accreditation program to succeed. The NCLEA working group is otherwise progressing towards completion of a final program guide and preparing the program to be available to all law enforcement agencies in the state.

The Association recommends that:

- 1) Funding be provided to the Divisions to implement, support, and manage the NCLEA Program. Accomplished in Session Law 2021-138 (Senate Bill 300).**
- 2) Every law enforcement agency in the state acquire and maintain accreditation in NCLEA.**

Accreditation ensures statewide adoption of policies which set minimum, uniform standards in areas such as use of force, chokeholds, duty to intervene and report on excessive use of force, vehicle pursuits, early warning programs, field training programs, and professional standards and conduct, among others. As such, the public will be better informed about what to expect when encountering a law enforcement officer anywhere in North Carolina. Officers could also seamlessly move from agency to agency knowing minimum agency standards will be the same across the state.

- 3) **Legislation be enacted providing that if an agency does not attain or maintain NCLEA accreditation, the agency would be ineligible to apply for or receive North Carolina Governor's Crime Commission or North Carolina Governor's Highway Safety Program grants.**
- 4) **The NCLEA Working Group study and recommend accreditation standards regarding jails, telecommunication centers, courthouse security, civil process, and animal control.**

Investigation of Reports of Separation

While each Division has similar processes in place for reviewing applicants for certification, there are some minor differences. Currently, when Sheriffs' Standards Division staff receives a report of separation of an officer from an agency, they analyze it to determine if any potential misconduct occurred. If so, staff makes a cursory inquiry of the separating agency to request additional information to determine if a rule violation has occurred which could cause the Commission to take action against the officer's certification.

In contrast, Criminal Justice Standards Division staff only analyze and investigate a report of separation when an officer who separates submits a new application with a criminal justice agency. The reason for this procedure is partly because of the larger number of officers the Criminal Justice Standards Commission is responsible for certifying.

The difference in procedure puts the Commissions at a disadvantage when an applicant applies for certification through either Commission after a lapse of time in employment, allowing time for witnesses to relocate and their recollections of events to fade before an investigation is conducted. Investigating when the report of separation is received allows for witnesses to be located more readily and fresh recollections of events surrounding the separation to be available.

Therefore, the Association recommends that:

- 1) **The Commissions require all reports of separation to be investigated at the time they are submitted.**
While the Sheriffs' Standards Division does conduct a cursory inquiry, a full investigation of every report of separation is needed.
- 2) **Funding be provided to the Divisions for additional staff that will need to be hired due to the increase in the number of investigators required to investigate every report of separation.**

Lateral Transfers

When an officer laterally transfers (*i.e.*, transfers from one law enforcement agency to another), the Sheriffs' Standards Commission requires the officer to complete a new application.¹⁸ This application includes but is not limited to a new drug screen and medical exam, an updated criminal history, and a Form F3, Personal History Statement.¹⁹ In particular, the F3 requires the applicant to detail, among other things, important information including: employment history, any domestic violence history, any criminal history, specifics regarding drug use, whether his or her certification has ever been suspended, revoked, or sanctioned in some way, and whether his or her resignation has ever been requested because of criminal misconduct or a rules violation.

¹⁸ 12 NCAC 10B .0406.

¹⁹ 12 NCAC 10B .0408.

This form provides valuable information not only to the Sheriffs' Standards Division, but also to the new hiring agency. Requiring a new application upon any lateral transfer helps to prevent a law enforcement officer from moving from agency to agency without having to report any additional information which is pertinent to meeting or maintaining minimum standards and may prevent him or her from receiving certification. A new and subsequent application also allows the Sheriffs' Standards Division staff to compare previous applications for any discrepancies. For example, a new application may find an applicant revealing information about prior drug use that was not disclosed on the original application. The discrepancy could reveal a failure to meet minimum standards which would require action by the certifying Commission.

The Criminal Justice Standards Commission does not require submission of any new and updated information upon lateral transfer. Instead new applications, drugs screens, etc. are discretionary. If new information is submitted, the Criminal Justice Standards Division staff will process and examine them just as the Sheriffs' Standards Division staff. However, failure to require submission of a new application upon lateral transfer does allow for the possibility that behavior which would prevent certification or could be a violation of minimum standards (which occurred during employment) will go unchecked if the lateral transfer is to another Criminal Justice Standards Division agency.

The Association recommends that:

- 1) The Criminal Justice Standards Commission require a new application be completed and reviewed upon every lateral transfer. At a minimum, that new application should consist of items currently required in 12 NCAC 10B .0408.**
- 2) Funding be provided to the Criminal Justice Standards Division for additional staff that will need to be hired due to the increase in the number of investigators required to properly review each new application upon a lateral transfer.**

North Carolina Criminal Justice Fellows Program

The purpose of the North Carolina Criminal Justice Fellows Program (CJ Fellows Program) is to recruit talented high school seniors into the criminal justice profession. The CJ Fellows Program seeks to draw seniors who are dedicated to community service, academic achievement, and a desire to serve the citizens of the State of North Carolina. The CJ Fellows Program provides those seniors with forgivable educational loans upon entry into the criminal justice profession in North Carolina.

Currently, the CJ Fellows Program will fund a two-year, Applied Associates Degree in Criminal Justice (or an approved related field of study) from a North Carolina Community College. Students who receive the fellowship will have that loan forgiven if they enter and remain in the criminal justice profession for four years in an eligible North Carolina county. Applicants must be a resident of an eligible county at the time of application. Eligible counties must have a population of less than 125,000 people or be designated as a development tier one area pursuant to G.S. § 143B-437.08 or both.²⁰ Currently eighty (80) of North Carolina's 100 counties are considered eligible counties.

²⁰ Session Law 2020-78.

The Association recommends that:

- 1) Adequate funding for the CJ Fellows Program be provided by the General Assembly. Funded in Session Law 2021-180 (Senate Bill 105).**
- 2) Eligible counties include all 100 counties in the State. This program was expanded in Session Law 2021-180 (Senate Bill 105) to counties with a population less than 200,000.**
- 3) The Program also fund:**
 - a. A four-year bachelor’s degree program; and**
 - b. BLET with loan forgiveness after one year of employment.**

Mental Health Services for Law Enforcement Officers

As citizens, we ask a lot of our law enforcement officers and for too long have given them few outlets to deal with job stress and trauma. Social stigmas still surround mental health treatment and resources are limited at a time when the rate of law enforcement officer suicide is at an all-time high. Nationwide, in 2019, 228 current or former officers died by suicide, compared with 174 in 2018.²¹ As a proposed step to help our law enforcement officers be more mentally healthy professionals, the Association supports increasing the availability of mental health services for law enforcement.

Most North Carolina law enforcement officers will never fire their weapon during their career. However, officers face situations daily and over the course of years which can and do affect their mental health. Officers frequently interact with people who are experiencing their worst moments. Officers engage with victims of domestic violence, sexual abuse, violent assaults, and trauma. They also witness the aftermath of traffic fatalities and homicide scenes, are required to issue death notifications to families, and work undercover assignments which require them to manipulate their personality to apprehend criminals. These are just a few of the routine job duties which affect a law enforcement officer’s mental health.

Just as society as a whole has worked to combat the stigma associated with seeking out mental health services, the same should be done for our law enforcement officers.

Therefore, the Association recommends that State funding be provided for mental health services for all law enforcement officers in North Carolina.

Physical Health of Law Enforcement Officers

Currently, law enforcement officers are required to pass the Police Officer Physical Aptitude Test (POPAT) before they may be certified. However, after passing the POPAT, they are not required by the State to pass any physical testing for the remainder of their career.

Some agencies require officers to pass physical tests as a reminder to keep physically fit and some as a requirement for certain promotions. As an incentive, agencies may give officers time to work out at an agency facility or at a gym of their choosing during their workday or may provide monetary incentives for meeting certain physical standards.

²¹ www.bluehelp.org

The Association recommends that:

- 1) **The Commissions study whether or not there is a benefit to introducing physical fitness testing post-certification into the profession of law enforcement and as part of that analysis consider any adjustment necessary for the increasing age of an officer. **This was accomplished in Session Law 2021-138 (Senate Bill 300).****
- 2) **Adequate funding be provided to the Commissions to complete the study.**

Salary

The Association believes sheriffs' office employees, including deputies, detention officers, and telecommunicators, are underpaid and because of low law enforcement salaries, recruitment suffers. According to most online resources the average salary for law enforcement officers in North Carolina is between the high \$30,000 range and the mid to high \$40,000 range.²² One source finds that this average salary places North Carolina in the bottom ten (10) states for law enforcement average salary.²³

In the recent past, the North Carolina General Assembly provided needed pay raises to State law enforcement and State correction officers. Adequate pay will serve to recruit and retain talented individuals as state law enforcement and correction officers and will likely create an increasingly more professional view of law enforcement.

This Association supports adequately funding law enforcement agency salaries.

In addition, the Association recommends reviewing and considering upward adjustment to local law enforcement agency salaries at least every two years.

Diversion of Individuals with Mental Health and Substance Abuse Issues

Routinely, law enforcement officers encounter individuals experiencing a mental health crisis or exhibiting behaviors associated with substance abuse. In many cases, if the person is committing a crime, a law enforcement officer is authorized to place them under arrest. Law enforcement officers must exercise their discretion to determine the best and right thing to do in these circumstances.

The current state of the law in North Carolina limits a law enforcement officer's options to help these individuals. Often, because there is no other place to take them, law enforcement officers must make the difficult decision to take these individuals into custody rather than leave them on the street.

Occasionally these individuals may also be the subject of an involuntary commitment order (IVC). Currently, those who are the subject of IVCs must be transported for an initial evaluation by a law enforcement officer.

²² <https://www.indeed.com/career/police-officer/salaries/NC>, https://www.glassdoor.com/Salaries/north-carolina-police-officer-salary-SRCH_IL.0,14_IS1282_KO15.29.htm, <https://www.ziprecruiter.com/Salaries/What-Is-the-Average-Police-Officer-Salary-by-State>.

²³ <https://www.lawofficer.com/forbes-reviews-police-officer-salaries-in-all-50-states/>

The Association recommends legislation be enacted that:

- 1) **Funding be provided to increase and make mental health and substance abuse resources more readily available in North Carolina.**
- 2) **Responsibility for transportation for initial evaluation of an individual who is the subject of an IVC be shifted from law enforcement officers to mental health professionals of the local management entity (LME).**

No Change Recommended

Criminal Conduct – (1) Self-Reporting and (2) Reporting by an Agency Head or Public Official

The Association reviewed the applicable rules regarding the reporting of criminal conduct to the Commissions and does not believe any change is needed. Currently, applicants and certified officers are required to self-report criminal conduct to the Divisions.²⁴ Staff then conducts a thorough investigation.

Likewise, if the Divisions receive a report of criminal conduct regarding an applicant or certified officer from a sheriff, a police chief, or another public official, such as a district attorney, Division staff will investigate that report to determine if the behavior warrants action against an officer's application or certification. If evidence can be found to support the allegation of criminal conduct, then Division staff prepares a case to move forward. This enables the Commissions to seek the appropriate sanction against the officer's certification or application.

Qualified Immunity

The Association reviewed the applicable law regarding qualified immunity and does not believe any change is needed. The Association supports the affirmative defense of qualified immunity. Qualified immunity is a judicially created doctrine that protects government officials (including law enforcement officers) from civil liability **only** when their conduct **does not violate** a clearly established constitutional right of which a reasonable official should have known. This protection allows officers to act in good faith without fear of civil consequences during critical moments which require split second decisions. Any change to this doctrine would have an extreme chilling effect on the decision making and actions of current law enforcement officers and on the ability to recruit new ones.

To be very clear, qualified immunity does not protect law enforcement officers from criminal liability or prosecution and is not a defense that is permissible in criminal proceedings. The doctrine will not allow a bad officer to commit a crime and avoid punishment. In fact, if current state or federal law makes a particular action criminal, an officer would reasonably be expected to know that, and therefore not only potentially open him or herself up to criminal prosecution, but likewise the officer would not be protected in civil court by the doctrine of qualified immunity. **Ultimately, qualified immunity will not shield a bad officer from being held accountable in a court of law.**

School Resource Officers (SROs)

The Association does not believe any change is needed with regard to the current use of school resource officers. The Association believes SROs are valuable assets in schools and as resources for students. The Association supports allowing the use and assignment of certified school resource officers in schools to be a local decision, made by local stakeholders as it has always been.

²⁴ 12 NCAC 10B .0301(b)(7), 12 NCAC 09B .0101(8).

The North Carolina Administrative Code requires any law enforcement officer who is acting in the role as an SRO to receive SRO certification by December 30, 2020.²⁵ This certification is required in addition to law enforcement officer certification. To become a certified SRO, an officer must take the Basic School Resource Officer Training Course offered by the North Carolina Justice Academy and pass the course exam with a minimum score of seventy (70). If first assigned as an SRO after December 30, 2020,²⁶ officers have one year to complete the training. To maintain SRO certification, officers must take a one-hour refresher course offered by the North Carolina Justice Academy every year.

The Association believes SROs should be carefully chosen by law enforcement agencies. Schools are not the place for personnel who do not have the desire and personality for the work. These law enforcement officers should be thoroughly vetted, as they will be interacting with minors on a daily basis.

It goes without saying that having SROs on school campuses after the tragedies at Columbine, Parkland, and Sandy Hook allows law enforcement to provide a level of security and threat assessment that would not otherwise be available. An SRO may be able to prevent an incident from happening or would be on campus to respond if one did. In the alternative, critical minutes could pass with no law enforcement officer on campus, and when one arrives, he or she may be totally unfamiliar with the campus, the staff, the students, and waste crucial minutes when lives may be at stake. As such, the Association supports the use of SROs in North Carolina schools.

Sentinel Event Review and Citizen Review Boards

The Association opposes the mandatory implementation of sentinel event reviews and citizen review boards and does not believe any change is needed to the current law.

Sentinel event reviews are essentially an additional third-party review by non-experts of critical incidents. The Association defines a critical incident as one involving any use of force by a law enforcement officer which results in death or serious bodily injury to a person. It also includes situations when a person dies in-custody or has been in the custody of a jail and either by suicide or otherwise suffers an injury or medical event which results in serious bodily injury or death. A process already exists to provide a third-party review of these critical events in North Carolina.

Any law enforcement agency in the State may request that the SBI investigate any officer involved shooting (regardless of whether the shooting resulted in the death of the victim). All sheriffs (and other law enforcement agencies) call upon the SBI to investigate all officer involved shootings. If an agency did choose not to request an investigation of an officer involved shooting, the family of a victim has a right to request the SBI to investigate by having the District Attorney request the SBI investigate on their behalf.²⁷ In addition to shootings, an agency can request the SBI to investigate any officer use of force or officer use of deadly force, or death in custody.²⁸

²⁵ Due to coronavirus delays, the Sheriffs' Standards Commission voted to allow an extension of the December 31, 2020 deadline to August 31, 2021. The Criminal Justice Standards Commission has not yet considered an extension but may do so at their November 2020 meeting.

²⁶ Id.

²⁷ N.C. SBI, Officer Involved Use of Force Investigations, Steps for Law Enforcement Following a Critical Incident.

²⁸ G.S. § 143B-917.

The SBI's investigation is conducted as an independent criminal investigation to determine whether the officer violated the law. While the officer's employing agency will conduct an internal administrative investigation, that will determine only whether the officer followed or violated agency policy. At the conclusion of the SBI investigation, the complete criminal investigative file is turned over to the local District Attorney who will determine whether criminal charges should be filed. If the District Attorney chooses to pursue criminal charges, then the lead investigator for the SBI will likely be called to testify to a grand jury whose members will determine if probable cause exists for a true bill of indictment on criminal charges against the officer. If so, the case will proceed through the criminal justice system and may ultimately be decided by a jury.

In North Carolina, sheriffs and district attorneys are constitutionally elected officials and should be held accountable if they employ or fail to prosecute criminals. For centuries, citizens have made their voices heard by voting when they believed their viewpoints were not being reflected in the actions of their elected officials. As such, the Association believes that voting allows every citizen to be a member of a constitutional citizen review board and provides the necessary checks and balances in our justice system.

Finally, to promote unbiased criminal investigations of law enforcement officers, the Association recommends that ALL law enforcement agencies involved in a critical incident (as defined above) utilize an outside law enforcement agency to conduct the criminal investigation.

Law Enforcement Agency Recordings – NC General Statute amended in Session Law 2021-138 (Senate Bill 300)

In 2016, North Carolina enacted a law regarding disclosure and release of law enforcement agency recordings. Of particular importance to this statute, is the balance between the public interest in law enforcement transparency and other legal considerations related to protection of information regarding juveniles and victims, the integrity of law enforcement investigations for benefit of both the injured or deceased and law enforcement officers involved, as well as privacy considerations regarding medical information frequently recorded during law enforcement interactions among other things.

During the 2021 Legislative Session concerns were raised about the process in place in the current statute as it relates to disclosure of law enforcement agency recordings. The Association was asked to assist in drafting a change to the law enforcement agency recording provisions of Chapter 132 related only to disclosure. As a result, the Association supported the version of the language which was included in Session Law 2021-138 (Senate Bill 300).

The new law amends G.S. 132-1.4A to create a new procedure for the immediate disclosure of dash-cam or body-cam footage depicting a death or serious bodily injury, defined as “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.”

Under the new procedure, a person may submit a signed and notarized form requesting immediate disclosure to the head of the law enforcement agency having custody of the footage. This form is to be developed by the Administrative Office of the Courts.

The law enforcement agency having custody of the footage must then, within 3 business days of receiving the notarized form, file a petition in the superior court of the county where any portion of the recording was

made and deliver a copy of the petition and subject recording to the senior resident superior court judge for that superior court district or their designee. There is no fee for filing the petition.

Within 7 business days of the filing of the petition, the court must conduct an in-camera review of the recording and enter an order, based on the consideration of factors enumerated in the amended statute, instructing that the recording be: (1) immediately disclosed without editing or redaction, (2) immediately disclosed with editing or redaction, (3) disclosed at a later date, with or without editing or redaction, or (4) withheld from the person(s) seeking immediate disclosure.

In any proceeding held pursuant to the new procedure, the head of the custodial law enforcement agency, any law enforcement personnel whose image or voice is in the portion of the recording requested to be disclosed, the head of that person's employing law enforcement agency, the District Attorney, the investigating law enforcement agency, and the person(s) requesting disclosure must be notified and given an opportunity to be heard.

The bill also amends G.S. 132-1.4A to provide that (1) any person who willfully records, copies, or attempts to record or copy a recording disclosed pursuant to the new procedure is guilty of a Class 1 misdemeanor, (2) any person who willfully disseminates a recording or a copy of a recording disclosed pursuant to the new procedure is guilty of a Class I felony, and (3) any attorney acting as a personal representative for the purposes of petitioning for the disclosure or release of body-cam or dash-cam footage must be licensed in North Carolina.

The Association believes no further changes to this statute are needed.

Personnel Records and Public Records in North Carolina

The Association reviewed the applicable law regarding personnel records and public records and does not believe any change is needed. The Association supports the current personnel and public records laws in North Carolina. Chapter 132 of the North Carolina General Statutes governs public records requests. The law currently allows anyone to request public records. A person may even anonymously request public records.

While personnel records are not generally public record in North Carolina, certain information from a personnel file is considered public record. For county employers, G.S. § 153A-98 provides the following information is public record:

- employee name
- current salary
- salary history
- contract terms
- original employment date
- current position title and location
- history of changes in position classification and disciplinary action
- history and reasons for promotion and
- if an employee is dismissed, the final notice of dismissal, if written.

Similar statutes govern personnel files for municipal employers in Chapter 160A and state employers in Chapter 126 of the General Statutes.

Criminal investigative files are generally not considered public record and may not be released without a court order. However, G.S. § 132-1.4 does provide that certain contents of a criminal investigative file are public record and must be released. That information includes:

- reported violations or apparent violations of the law
- information about persons arrested, charged, or indicted
- information surrounding an arrest (i.e., the time and place of arrest)
- 911 recordings (excluding information that would reveal information about the caller, victim, or a witness) and
- radio communication between law enforcement personnel, and information about complaining witnesses (unless that information would jeopardize their safety).

In addition, if a law enforcement officer is the subject of a disciplinary hearing through the N.C. Office of Administrative Hearings, a copy of the judge's proposal regarding that officer's certification is available by request from the North Carolina Office of Administrative Hearings. The final agency decision regarding a law enforcement officer's certification is available from the North Carolina Department of Justice upon request.

Conclusion

North Carolina Sheriffs stand together, regardless of political affiliation, race, agency size or location.

We have no tolerance for racism or excessive force by law enforcement within our agencies or any other agencies.

We believe improving law enforcement professionalism through the recommendations included in this report will help to eradicate those few in our profession who do not uphold the same standards.

We commit to hiring and employing only those who are truly fit for the law enforcement profession.

We will continue to develop and build community relationships and be responsive to the needs of our citizens.

We request support for these recommendations which are designed to support the ongoing needs of law enforcement professionals in areas such as training, mental health, and compensation.

We stand ready to work with our communities, the North Carolina legislature, the Governor, judges, as well as state and local agencies to make things better for all law enforcement and the citizens we serve.