

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 683

Short Title: Citizens Review Officer Conduct.

(Public)

Sponsors: Senators Richardson; Edwards, Lee, Ballance, Hunt, Jordan, and Martin of Guilford.

Referred to: Judiciary II.

April 5, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE NORTH CAROLINA CITIZENS' LAW
3 ENFORCEMENT REVIEW COMMISSION AND LOCAL CITIZENS' LAW
4 ENFORCEMENT REVIEW BOARDS TO PROVIDE FOR CITIZEN REVIEW OF
5 THE CONDUCT OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

6 The General Assembly of North Carolina enacts:

7 Section 1. The General Statutes are amended by adding a new Chapter to
8 read:

9 **"CHAPTER 17F.**

10 **"ARTICLE 1.**

11 **"GENERAL PROVISIONS.**

12 **"§ 17F-1-1. Definitions.**

13 Unless the context clearly otherwise requires, the following definitions apply in this
14 Chapter:

- 15 (1) 'Commission' means the North Carolina Citizens' Law Enforcement
16 Review Commission.
- 17 (2) 'Deadly force' means force causing serious bodily injury to a person or
18 force that results in the death of a person.
- 19 (3) 'Law enforcement officer' or 'officer' means either a State or local law
20 enforcement officer.
- 21 (4) 'Local criminal justice agencies' means county or municipal law
22 enforcement agencies, sheriffs' departments, city police forces, county
23 police forces, county corrections agencies, county juvenile justice

1 agencies, county jails, city lockups, or other locally controlled law
2 enforcement agencies.

3 (5) 'Local law enforcement officer' or 'Local law officer' means the
4 administrative and field personnel of all the departments, agencies,
5 units, or entities comprising the 'local criminal justice agencies,' as
6 defined in subdivision (4) of this section, who are sworn, armed, and
7 have the power of arrest.

8 (6) 'Misconduct' means conduct by a law enforcement officer that
9 evidences:

10 a. A willful disregard for the constitutional rights of any person in
11 the course of the execution of the officer's duties;

12 b. Intentional rudeness, harassment, or intimidation; or unlawful
13 discrimination by an officer toward any person in the course of
14 the execution of the officer's duties;

15 c. Intentional violation of laws relating to arrests, searches, or
16 seizures;

17 d. Improper use of force, including the unjustified use of deadly
18 force; or

19 e. Abuse of authority in a manner that is prejudicial to the
20 administration of justice.

21 (7) 'Office' means Office of the Citizens' Review Commission.

22 (8) 'Review board' means a local citizens' law enforcement review board
23 established in accordance with G.S. 153A-231.

24 (9) 'State criminal justice agencies' means State law enforcement agencies,
25 the State corrections agencies, and the State juvenile justice agencies,
26 but shall not include deputy sheriffs, special deputy sheriffs, sheriffs'
27 jailers, or other sheriffs' department personnel.

28 (10) 'State law enforcement officer' or 'State law officer' means the
29 administrative and field personnel of all the departments, agencies,
30 units, or entities comprising the 'State criminal justice agencies,' as
31 defined in subdivision (9) of this section, who are sworn, armed, and
32 have the power of arrest.

33 "ARTICLE 2.

34 "NORTH CAROLINA CITIZENS' LAW ENFORCEMENT REVIEW 35 COMMISSION.

36 "§ 17F-2-1. Findings and policy.

37 The General Assembly finds that the fair administration of criminal justice and the
38 conduct of State law enforcement officers are of statewide concern, and that proper
39 State law officer conduct is important to the health, safety, and welfare of the people of
40 the State and is of such nature as to require that the conduct of law enforcement officers
41 be subject to review by the people of this State. It is in the public interest that there be
42 established citizen review of State law enforcement officer conduct.

43 "§ 17F-2-2. North Carolina Citizens' Law Enforcement Review Commission 44 established; members; vacancies.

1 (a) There is established the North Carolina Citizens' Law Enforcement Review
2 Commission. The Commission shall be composed of 22 members as follows:

3 (1) Law Enforcement Officers. – One sworn State law enforcement officer
4 selected by the North Carolina State Law Enforcement Officers
5 Association, Inc., and two retired State law officers appointed by the
6 Governor.

7 (2) Citizens. – One individual who is not a law enforcement officer
8 appointed by each of the following: the Governor, the Chief Justice of
9 the North Carolina Supreme Court; the Chief Judge of the North
10 Carolina Court of Appeals; the Attorney General of the State of North
11 Carolina; and the Secretary of the Department of Crime Control and
12 Public Safety.

13 (3) At-large Groups. – One individual who is not a law enforcement
14 officer representing and appointed by each of the following
15 organizations: the North Carolina Law Enforcement Women's
16 Association; the North Carolina Association of District Attorneys; and
17 the North Carolina Academy of Trial Lawyers.

18 (4) Others. – The North Carolina Human Relations Commission shall
19 appoint five persons. The General Assembly shall appoint six persons,
20 three upon the recommendation of the Speaker of the House of
21 Representatives and three upon the recommendation of the President
22 Pro Tempore of the Senate.

23 (b) The members shall be appointed for staggered terms. The initial appointments
24 shall be made prior to September 1, 1993, and the appointees shall hold office until their
25 successors are appointed and qualified. The members who are law enforcement officers
26 appointed pursuant to subdivision (a)(1) of this section shall serve initial terms expiring
27 June 30, 1996. The members who are citizens appointed pursuant to subdivision (a)(2)
28 of this section shall serve initial terms expiring June 30, 1995. The members who are
29 at-large members appointed pursuant to subdivision (a)(3) of this section shall serve
30 initial terms expiring June 30, 1994. The members appointed by the North Carolina
31 Human Relations Commission pursuant to subdivision (a)(4) of this section shall serve
32 initial terms expiring June 30, 1996. The members appointed by the General Assembly
33 shall serve initial terms expiring June 30, 1995. Appointments by the General Assembly
34 shall be made in accordance with G.S. 120-121.

35 (c) Notwithstanding the appointments for a term of years, each member shall
36 serve at the will of the appointing authority. Vacancies in the Commission occurring for
37 any reason shall be filled, for the unexpired term, by the authority making the original
38 appointment of the person causing the vacancy. A vacancy may be created by removal
39 of a Commission member by majority vote of the Commission for misconduct,
40 incompetence, or neglect of duty. A Commission member may be removed only
41 pursuant to a hearing, after notice, at which the member subject to removal has an
42 opportunity to be heard. Vacancies in appointments by the General Assembly shall be
43 filled in accordance with G.S. 120-122.

44 **"§ 17F-2-3. Compensation.**

1 Members of the Commission who are State officers or employees shall receive no
2 compensation for serving on the Commission, but may be reimbursed for their expenses
3 in accordance with G.S. 138-6. Members of the Commission who are full-time salaried
4 public officers or employees other than State officers or employees shall receive no
5 compensation for serving on the Commission, but may be reimbursed for their expenses
6 in accordance with G.S. 138-5(b). All other members of the Commission may receive
7 compensation and reimbursement for expenses in accordance with G.S. 138-5.

8 **"§ 17F-2-4. Chair; vice-chair; other officers; meetings; reports.**

9 (a) The Commission shall elect one of the members of the Commission as chair
10 at the first regular meeting after July 1 of each year.

11 (b) The Commission shall select a vice-chair and such other officers and
12 committee chairs from among its members as it deems desirable at the first regular
13 meeting of the Commission after its creation and at the first regular meeting after July 1
14 of each year thereafter. Nothing in this subsection, however, shall prevent the creation
15 or abolition of committees or offices of the Commission, other than the offices of chair
16 and vice-chair, as the need may arise at any time during the year.

17 (c) The Commission shall hold at least four regular meetings per year upon the
18 call of the chair. Special meetings shall be held upon the call of the chair or the vice-
19 chair, or upon the written request of seven members of the Commission. Such special
20 meetings must be held within 30 days.

21 (d) The Commission shall present regular and special reports and
22 recommendations to the Governor and the General Assembly, or both, as the need may
23 arise or as the Governor or General Assembly may request.

24 **"§ 17F-2-5. Office of the Citizens' Review Commission established; appointment of**
25 **director; duties.**

26 (a) There is hereby established the Office of Citizens' Review Commission,
27 which shall be placed for organizational purposes within the Department of Justice. The
28 Office shall be organized and staffed in accordance with applicable laws and rules and
29 within the limits of authorized appropriations. The Office shall exercise its statutory
30 powers independent of control by the Attorney General and the Department of Justice
31 and shall be under the administration of a director appointed by the Governor. The
32 director shall serve at the pleasure of the Governor. The salary of the director shall be
33 fixed by the General Assembly. The director shall be under the supervision of the
34 Commission for the purposes of this Chapter and under the direct supervision of the
35 chair of the Commission. The director may hire such employees as are necessary for
36 administration of the Office upon approval by the Commission and by the Governor.

37 (b) The Office shall perform tasks necessary for the Commission's investigations
38 of alleged State law enforcement officer misconduct in accordance with the rules and
39 procedures adopted by the Commission. The Office shall perform tasks necessary for
40 the Commission's review of each instance in which deadly force is used by a State law
41 enforcement officer. The Office shall administer such programs and perform such other
42 duties as are assigned to it by the Commission. The Office shall provide upon request
43 technical assistance to the local citizens' law enforcement review boards created

1 pursuant to Article 2 of this Chapter. The Office shall administer additional related
2 programs as may be assigned to it by the General Assembly.

3 **"§ 17F-2-6. Powers of Commission.**

4 (a) In addition to other powers conferred upon the Commission elsewhere in this
5 Chapter, the Commission is authorized to:

6 (1) Adopt rules for review of the conduct of, and use of deadly force by,
7 State law enforcement officers, including rules that require the
8 disclosure by any State criminal justice agency of information with
9 respect to the employment, education, background, retention,
10 discipline, and training of State law enforcement officers, or that relate
11 to a State law officer's personal conduct or the use of deadly force by a
12 State law officer.

13 (2) Investigate and make such evaluations as may be necessary to
14 determine if a State law enforcement officer has engaged in
15 misconduct in the execution of the officer's duties in the administration
16 of justice.

17 (3) Establish procedures by which citizens may initiate complaints
18 concerning the alleged misconduct of State law enforcement officers.

19 (4) Impanel review committees, consisting of an odd number of no less
20 than three and no more than seven Commission members to:

21 a. Hear complaints against State law enforcement officers
22 that pertain to alleged officer misconduct; and,

23 b. Review each instance of the use of deadly force by State
24 law enforcement officers.

25 (5) Find by a preponderance of the evidence presented at a fair hearing
26 that a State law enforcement officer has or has not engaged in
27 misconduct.

28 (6) Study, obtain data, statistics, and information and make reports
29 concerning the conduct of State law enforcement officers and the use
30 of deadly force by officers.

31 (7) Do such things as may be necessary and incidental to the
32 administration of its authority pursuant to this Chapter, including
33 entering into contracts.

34 (b) The rules and procedures adopted by the Commission shall not be subject to
35 the rule-making requirements of the North Carolina Administrative Procedure Act.

36 (c) The Commission shall have the following powers which shall be binding in
37 nature and for which the Commission may undertake enforcement actions in the
38 Superior Court of Wake County:

39 (1) Sanction a State law enforcement officer when, after a fair hearing,
40 misconduct by the State law officer is found to have occurred and the
41 Commission determines that discipline up to and including dismissal
42 or decertification of the officer, is warranted.

43 (2) Sanction a State criminal justice agency for obstructing the review by
44 the Commission of officer conduct, for failing to cooperate with an

1 investigation or hearing conducted by the Commission, or for failing to
2 comply with an order of the Commission issued in accordance with
3 this Chapter. Sanctions levied against a State criminal justice agency
4 may include the forfeiture of State funds in an amount not to exceed
5 one hundred thousand dollars (\$100,000) per each occurrence of
6 obstruction of, or noncooperation with, the orders of the Commission.

7 (3) Direct that a State criminal justice agency subject a State law
8 enforcement officer to discipline up to and including dismissal from
9 employment as a law enforcement officer if the Commission finds that
10 the State law officer engaged in misconduct warranting discipline.

11 (4) Direct that a State law enforcement officer's certification be revoked
12 by the North Carolina Criminal Justice and Education Training
13 Standards Commission.

14 **"§ 17F-2-7. Commission hearings; discovery; decisions; official record.**

15 (a) Any State law enforcement officer whose conduct is the subject of a review
16 proceeding shall have the right to counsel in connection with the review of the
17 Commission. Commission review hearings shall be conducted in a fair and impartial
18 manner and shall include the presentation of evidence on issues of fact; examination and
19 cross examination of witnesses, including the author of a document prepared by, on
20 behalf of, or for the use of the Commission, or offered into evidence; submission of
21 rebuttal evidence; and presentation of arguments on issues of law or policy.

22 (b) Review hearings shall be conducted by panels of Commission members
23 selected by the chair in such manner as authorized by this Chapter or in accordance with
24 rules adopted by the Commission.

25 (c) In preparation for, or in the conduct of, a review hearing, subpoenas may be
26 issued and served in accordance with G.S. 1A-1, Rule 45. Discovery of information
27 obtained by the Commission may be had in accordance with rules adopted by the
28 Commission.

29 (d) The Commission member presiding over a hearing panel may:

30 (1) Administer oaths and affirmations;

31 (2) Sign and issue subpoenas in the name of the Commission, requiring
32 attendance and giving of testimony by witnesses and the production of
33 books, papers, and other documentary evidence;

34 (3) Provide for the taking of testimony by deposition;

35 (4) Regulate the course of the hearings, set the time and place for
36 continued hearings, and fix the time for filing of briefs and other
37 documents;

38 (5) Apply to the Superior Court of Wake County for an order to show
39 cause why any person should not be held in contempt of the
40 Commission and its processes; and the court shall have the power to
41 impose punishment as for contempt for acts which would constitute
42 direct or indirect contempt if the acts occurred in an action pending in
43 superior court.

1 (e) Commission members serving on hearing panels shall not communicate,
2 directly or indirectly, in connection with any issue of fact or question of law before the
3 panel, with any person or party or representative of any person or party, except on
4 notice and opportunity for all parties to participate.

5 (f) When a majority of the Commission elects not to hear a review proceeding,
6 the Commission shall apply to the Director of the Office of Administrative Hearings for
7 the designation of an administrative law judge to preside at the review hearing. Upon
8 receipt of the application, the Director of the Office of Administrative Hearings shall,
9 without undue delay, assign an administrative law judge to hear the case. The provisions
10 of this Chapter, rather than the provisions of Article 3 of Chapter 150B shall govern the
11 review hearing. The administrative law judge assigned to hold the review hearing shall
12 sit in place of the Commission and shall have the authority of the presiding Commission
13 member. The administrative law judge shall make a proposal for decision, which shall
14 contain proposed findings of fact and proposed conclusions of law. The Commission
15 may make its final decision only after the administrative law judge's proposal for
16 decision is served on the officer and the Commission, and an opportunity is given to the
17 State law officer to file exceptions and proposed findings of fact and to present oral and
18 written arguments to the Commission.

19 (g) An administrative law judge shall stay any proceeding under this Chapter on
20 motion of the Commission, if the Commission shows by supporting affidavits that it is
21 engaged in litigation in State court or in administrative proceedings, by whatever name
22 called, with or before a federal agency, and this other litigation or administrative
23 proceedings will determine the position, in whole or in part, of the Commission in the
24 subject proceeding or will render moot further proceedings by the Commission. At the
25 conclusion of the other litigation or administrative proceedings, and if further
26 proceedings by the Commission will not be moot, the review hearing shall proceed and
27 be determined as expeditiously as possible.

28 **"§ 17F-2-8. Functions of the Department of Justice; independent counsel.**

29 (a) The Attorney General shall provide such legal staff assistance as the
30 Commission shall require in the performance of its duties, including the enforcement of
31 its orders issued in accordance with this Chapter.

32 (b) If the provision of legal assistance by the Attorney General would present a
33 potential conflict of interest, would appear to be improper, or would otherwise be
34 inappropriate, then the Commission may retain independent counsel to provide legal
35 staff assistance upon majority vote of the Commission and approval of the Governor.
36 The Governor may use the available salary reserves of the Department of Justice to pay
37 the reasonable costs of retaining independent counsel for the Commission.

38 **"§ 17F-2-9. Power of the Commission to seek injunction; judicial review; appeals.**

39 (a) The Commission may appear in its own name and apply to the Superior Court
40 of Wake County for injunctions to enforce orders of the Commission to a State criminal
41 justice agency or against a State law enforcement officer.

42 (b) Any State law enforcement officer who is sanctioned by the Commission is
43 entitled to judicial review of the decision of the Commission. To obtain judicial review,
44 a State law officer who is sanctioned by the Commission must institute a civil action in

1 the form of a petition to the Superior Court of Wake County. The State law officer must
2 appeal the decision of the Commission to the Superior Court of Wake County within 30
3 days of the officer's receipt of the written decision. A State law officer who fails to file a
4 petition within the required time waives the right to judicial review; however, the court
5 may accept an untimely petition for good cause shown. The Commission shall be a
6 party to the appeal proceedings. The petition shall explicitly state what exceptions are
7 taken to the decision or procedure and what relief the petitioner seeks.

8 (c) Within 30 days of service of the State law enforcement officer's petition, or
9 within such additional time as the court will allow, the Commission shall transmit to the
10 court the original or certified copy of the official record in the matter under review
11 together with the Commission's final order or decision. With the permission of the
12 court, the record may be shortened by stipulation of the parties to the proceeding. Any
13 party unreasonably refusing to stipulate to limit the record may be taxed by the court for
14 the additional costs caused by the refusal. The court may require or permit subsequent
15 corrections or additions to the record when deemed desirable.

16 (d) At any time before or during the review proceeding, a State law enforcement
17 officer may apply to the Superior Court of Wake County for an order staying the
18 decision of the Commission pending the outcome of the review. The court may grant or
19 deny the stay in its discretion upon such terms as it may deem proper and subject to the
20 provision of G.S. 1A-1, Rule 65.

21 (e) The review by the Superior Court of Wake County shall be conducted
22 without a jury and shall be made upon the record of the proceedings before the
23 Commission. The Superior Court of Wake County may affirm the decision of the
24 Commission, or remand the case for further proceedings. The Superior Court of Wake
25 County may also reverse or modify the Commission's decision if the substantial rights
26 of an officer may have been prejudiced because the Commission's findings, conclusions,
27 or decision are:

28 (1) In violation of constitutional provisions;

29 (2) In excess of the Commission's statutory authority;

30 (3) Made upon unlawful procedure;

31 (4) Unsupported by substantial evidence in view of the entire record as
32 submitted; or

33 (5) Arbitrary or capricious.

34 (f) A party to a review proceeding may appeal to the appellate division from the
35 final judgment of the Superior Court of Wake County as provided in G.S. 7A-27.
36 Pending the outcome of an appeal, an appealing party may apply to the Superior Court
37 of Wake County for a stay of that judgment or a stay of the proceeding before the
38 Commission that is the subject of the appeal, as appropriate.

"ARTICLE 3.

"LOCAL CITIZENS' LAW ENFORCEMENT REVIEW BOARDS.

"§ 17F-3-1. Findings and policy.

42 The General Assembly finds that the fair administration of criminal justice at the
43 local government level and the conduct of local law enforcement officers are of
44 statewide and local concern, and that proper local law enforcement officer conduct is

1 important to the health, safety, and welfare of the people of the State and is of such
2 nature as to require that the conduct of local law enforcement officers be subject to
3 review by the people of this State. It is in the public interest that there be established
4 local citizens' boards for the review of local law enforcement officer conduct.

5 **"§ 17F-3-2. Local citizens' law enforcement review boards; functions; relationship**
6 **to North Carolina Citizens' Law Enforcement Review Commission.**

7 (a) Each county board of commissioners shall establish a local citizens' law
8 enforcement review board under G.S. 153A-231 to review the conduct of local law
9 enforcement officers.

10 (b) Each local citizens' law enforcement review board shall submit to the Office a
11 quarterly report of the local review boards' activities and investigations. The quarterly
12 report of the review board shall include such information as the Office may request,
13 including:

- 14 (1) A statement of the total number of citizens' complaints filed with the
15 review board regarding the conduct of local law enforcement officers;
- 16 (2) A statement of the total number of investigations by the review board
17 of local law enforcement officer conduct or of the use of deadly force;
- 18 (3) A summary of the disposition of each investigation made by the
19 review board; and
- 20 (4) A summary of any other activities undertaken by the local citizens' law
21 enforcement review board.

22 (c) The Office shall compile annually a report on the activities of local citizens'
23 law enforcement review boards and shall distribute the report to each local government
24 that employs local law enforcement officers.

25 (d) The Office of the Citizens' Review Commission may provide technical
26 assistance to a local citizens' law enforcement review board regarding administration of
27 the review board and the investigation of local law enforcement officer conduct and the
28 use of deadly force upon the approval of the governing board of a local government."

29 Sec. 2. G.S. 128-16 reads as rewritten:

30 **"§ 128-16. Officers subject to removal; for what offenses.**

31 (a) Any sheriff or police officer shall be removed from office by the judge of the
32 superior court, resident in or holding the courts of the district where said officer is
33 resident upon charges made in writing, and hearing thereunder, for the following causes:

- 34 (1) For willful or habitual neglect or refusal to perform the duties of his
35 office.
- 36 (2) For willful misconduct or maladministration in office.
- 37 (3) For corruption.
- 38 (4) For extortion.
- 39 (5) Upon conviction of a felony.
- 40 (6) For intoxication, or upon conviction of being intoxicated.

41 (b) In the alternative to removal pursuant to subsection (a) of this section, a
42 sheriff or police officer may be removed from office by the judge of the superior court,
43 resident in or holding the courts of the district where said officer is resident, upon the

1 charges of the local citizens' law enforcement review board that the sheriff or police
2 officer has committed misconduct warranting his or her removal from office.

3 (c) A petition under this Article shall be filed by the local citizens' law
4 enforcement review board whenever it finds that a sheriff or police officer has engaged
5 in misconduct that renders the sheriff or police officer unfit and disciplinary action
6 against the sheriff or police officer by the employing local government is not instituted
7 within 90 days of the notification provided to the employing local government by the
8 local citizens' law enforcement review board in accordance with G.S. 153A-231.1."

9 Sec. 3. G.S. 128-17 reads as rewritten:

10 **"§ 128-17. Petition for removal; county attorney to prosecute.**

11 (a) The complaint or petition shall be entitled in the name of the State of North
12 Carolina, and may be filed upon the relation of any five qualified electors of the county
13 in which the person charged is an officer, upon the approval of the county attorney of
14 such county, or the district attorney of the district, or by any such officer upon his own
15 motion. It shall be the duty of the county attorney or district attorney to appear and
16 prosecute this proceeding. The county attorney or district attorney may delegate to the
17 Attorney General the duty to appear and prosecute the proceeding.

18 (b) The complaint or petition shall be entitled in the name of the State of North
19 Carolina, and may be filed upon charges made by the local citizens' law enforcement
20 review board of the county in which the person charged is an officer. It shall be the
21 duty of the county attorney or district attorney to appear and prosecute this proceeding
22 unless the duty to appear and prosecute the proceeding is delegated to the Attorney
23 General or the board of county commissioners authorizes the local citizens' law
24 enforcement review board to retain independent counsel to prosecute the proceeding
25 and independent counsel is retained to prosecute the proceeding."

26 Sec. 4. G.S. 128-18 reads as rewritten:

27 **"§ 128-18. Petition filed with clerk; what it shall contain; answer.**

28 (a) The accused shall be named as defendant, and the petition ~~shall~~ may be signed
29 by some elector, or by such officer. The petition shall state the charges against the
30 accused, and may be amended, and shall be filed in the office of the clerk of the
31 superior court of the county in which the person charged is an officer. The accused may
32 at any time prior to the time fixed for hearing file in the office of the clerk of the
33 superior court his answer, which shall be verified.

34 (b) The accused shall be named as defendant, and the petition may be signed by
35 the chair of the local citizens' law enforcement review board. The petition shall state the
36 charges against the accused, and shall include the record of the proceedings before the
37 local citizens' law enforcement review board and a copy of the written decision of the
38 review board. The petition shall be filed in the office of the clerk of superior court of
39 the county in which the person charged is an officer. The accused may at any time prior
40 to the time fixed for hearing file in the office of the clerk of superior court a written
41 response to the record of the proceedings and decision of the review board."

42 Sec. 5. Article 10 of Chapter 153A of the General Statutes is amended by
43 adding a Part to read:

44 **"PART 3. CITIZENS' REVIEW OF LAW ENFORCEMENT.**

1 "§ 153A-231. Citizens' law enforcement review boards established; purpose;
2 members; terms.

3 (a) The board of commissioners shall provide for the appointment of a local
4 citizens' law enforcement review board to review the conduct of local law enforcement
5 officers and to review the use of deadly force by local law enforcement officers. The
6 local citizens' law enforcement review board shall consist of an odd number of no less
7 than five and no more than nine persons, all of whom shall be residents of the county.
8 The local citizens' law enforcement review board shall reflect the diversity of the local
9 community. In order for the review board's membership to reflect a cross section of the
10 population of the county, the members of the review board shall include persons
11 representing both majority and minority ethnic groups and persons representing both
12 majority and minority political parties. No member of the review board may be a
13 current law enforcement officer and no more than one member may be a former law
14 enforcement officer. Members of the review board shall serve staggered terms as
15 determined by the board of commissioners, but no review board member may serve for
16 more than two consecutive full terms.

17 (b) The local citizens' law enforcement review board is subject to G.S. 17F-3-2.

18 "§ 153A-231.1. Definitions.

19 Unless the context clearly otherwise requires, the following definitions apply in this
20 Part:

- 21 (1) 'Deadly force' means force causing serious bodily injury to a person or
22 force that results in the death of a person.
- 23 (2) 'Local criminal justice agencies' means county or municipal law
24 enforcement agencies, sheriffs' departments, city police forces, county
25 police forces, county corrections agencies, county juvenile justice
26 agencies, county jails, city lockups, or other local law enforcement
27 agencies.
- 28 (3) 'Local law enforcement officer' or 'Officer' means the administrative
29 and field personnel of all the departments, agencies, units, or entities
30 comprising 'local criminal justice agencies', as defined in subdivision
31 (2) of this section, who are sworn, armed, and have the power of arrest.
- 32 (4) 'Misconduct' means conduct by a local law enforcement officer that
33 evidences:
- 34 a. A willful disregard for the constitutional rights of any person in
35 the course of the execution of the officer's duties;
- 36 b. Intentional rudeness, harassment, or intimidation; or unlawful
37 discrimination by an officer toward any person in the course of
38 the execution of the officer's duties;
- 39 c. Intentional violation of laws relating to arrests, searches, or
40 seizures;
- 41 d. Improper use of force, including the unjustified use of deadly
42 force; or
- 43 e. Abuse of authority in a manner that is prejudicial to the
44 administration of justice.

1 (5) 'Review board' means a local citizens' law enforcement review board.

2 **"§ 153A-231.2. Powers of Commission.**

3 (a) The local citizens' law enforcement review board shall have the following
4 powers:

5 (1) Adopt procedures for review of the conduct of, and use of deadly force
6 by, local law enforcement officers.

7 (2) Investigate and make such evaluations as may be necessary to
8 determine if a local law enforcement officer has engaged in
9 misconduct in the execution of the officer's duties in the administration
10 of justice.

11 (3) Establish procedures by which citizens may initiate complaints
12 concerning the alleged misconduct of local law enforcement officers.

13 (4) Hear complaints against local law enforcement officers that pertain to
14 alleged officer misconduct and review each instance of the use of
15 deadly force by local law enforcement officers.

16 (5) Find that a local law enforcement officer has or has not engaged in
17 misconduct.

18 (6) Make recommendations to the governing body of a local government
19 employing an officer that discipline up to and including dismissal be
20 imposed against an officer found to have engaged in misconduct.

21 (7) Initiate against a local law enforcement officer a petition filed in
22 accordance with G.S. 128-17 when the review board finds that the
23 local law officer has engaged in misconduct.

24 (8) Study, obtain data, statistics, and information, and make reports
25 concerning the conduct of local law enforcement officers and the use
26 of deadly force by officers, including quarterly reports to the North
27 Carolina Citizens' Law Enforcement Review Commission.

28 (b) The board of commissioners may confer upon the local citizens' law
29 enforcement review board such additional powers as the board deems proper.

30 **"§ 153A-231.3. Conduct of reviews.**

31 (a) The review board shall conduct reviews of alleged local law officer
32 misconduct and of the use of deadly force by holding hearings in accordance with
33 procedures approved by the board of commissioners which shall include:

34 (1) Timely notice of the review proceedings to the officer complained of,
35 to the local government that employs the officer, and to the person or
36 persons complaining of alleged misconduct by the officer;

37 (2) An opportunity for the officer whose conduct is under review to be
38 heard with regard to the circumstances surrounding the alleged
39 misconduct that is subject to review;

40 (3) An opportunity for the person or persons complaining of an officer's
41 alleged misconduct to be heard with regard to the circumstances
42 surrounding the alleged misconduct that is subject to review; and

43 (4) A method by which relevant personnel information relating to an
44 officer whose conduct is under review may be obtained and reviewed

1 by the review board in such manner as to limit the unnecessary
2 disclosure of information about the officer's employment.

3 **"§ 153A-231.4. Action by the board of commissioners; action by the sheriff; action**
4 **by the municipal governing body.**

5 (a) After holding a fair hearing to review the conduct of a local law enforcement
6 officer, or to review the use of deadly force by an officer, the review board shall
7 recommend to the governing body of the local government that employs the officer
8 whether the actions of the officer that were the subject of review warrant discipline of
9 the officer including but not limited to dismissal from employment in the local law
10 enforcement agency.

11 (b) Unless the review involves a city police officer or deputy sheriff, jailer, or
12 other personnel of the sheriff's department, the board of commissioners shall consider in
13 executive session the recommendations of the review board within 30 days of the
14 recommendations being transmitted to the board of commissioners. The board of
15 commissioners shall accept, reject, or modify the recommendations of the review board
16 in writing and shall state its specific reasons for accepting, rejecting, or modifying the
17 recommendations of the review board. The written action of the board of
18 commissioners shall be transmitted to the review board within 30 days of the meeting of
19 the board of commissioners at which the recommendations were accepted, rejected, or
20 modified.

21 (c) If the review involves a deputy sheriff, jailer, or other personnel of the
22 sheriff's department, the board of commissioners shall transmit to the sheriff, within 10
23 days of its receipt of the recommendations of the review board, a written statement
24 indicating whether the board of commissioners agrees or disagrees with the
25 recommendations of the review board. A copy of the statement shall also be provided
26 by the board of commissioners to the review board. The sheriff shall, within 30 days of
27 receipt of the statement from the board of commissioners, either accept, reject, or
28 modify the recommendations of the review board and shall state in writing his or her
29 specific reasons for accepting, rejecting, or modifying the recommendations.

30 (d) If the review involves an officer employed by a municipality then the
31 governing body of the municipality shall consider in executive session the
32 recommendations of the review board within 30 days of the recommendations being
33 transmitted to the governing body. The governing body shall accept, reject, or modify
34 the recommendations of the review board in writing and shall state its specific reasons
35 for accepting, rejecting, or modifying the recommendations of the review board. The
36 written action of the governing body shall be transmitted to the review board within 30
37 days of the meeting of the governing body at which the recommendations were
38 accepted, rejected, or modified."

39 Sec. 6. Article 13 of Chapter 160A of the General Statutes is amended by
40 adding a new section to read:

41 **"§ 160A-285.1. Review of city police officer conduct; removal of unfit officers.**

42 Notwithstanding any other provision of law, the conduct of city police officers shall
43 be reviewed by local citizens' law enforcement review boards established pursuant to
44 Part 3 of Article 10 of Chapter 153A of the General Statutes, provided that nothing in

1 this section shall be construed to prohibit the removal of an unfit city police officer
2 pursuant to the provisions of Article 2 of Chapter 128 of the General Statutes not
3 requiring action by the local citizens' law enforcement review board for removal of an
4 unfit officer."

5 Sec. 7. This act is effective upon ratification.