

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H

2

HOUSE BILL 536  
Senate Judiciary Committee Substitute Adopted 8/10/21

Short Title: Law Enforcement Duty to Intervene.

(Public)

Sponsors:

Referred to:

April 14, 2021

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A DUTY FOR LAW ENFORCEMENT OFFICERS TO INTERVENE IN AND REPORT EXCESSIVE USE OF FORCE; TO REQUIRE USE OF THE NATIONAL DECERTIFICATION INDEX MAINTAINED BY THE INTERNATIONAL ASSOCIATION OF DIRECTORS OF LAW ENFORCEMENT STANDARDS AND TRAINING IN THE CERTIFICATION PROCESS FOR CERTIFIED PERSONNEL; AND TO REQUIRE REPORTING RELATED TO GIGLIO MATERIAL.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 15A-401 is amended by adding a new subsection to read:

"(d1) Duty to Intervene and Report Excessive Use of Force. – A law enforcement officer, while in the line of duty, who observes another law enforcement officer use force against another person that the observing officer reasonably believes exceeds the amount of force authorized by subsection (d) of this section and who possesses a reasonable opportunity to intervene, shall, if it is safe to do so, attempt to intervene to prevent the use of excessive force. Additionally, the observing officer shall, within a reasonable period of time not to exceed 72 hours thereafter, report what the officer reasonably believes to be an unauthorized use of force to a superior law enforcement officer within the agency of the observing officer, even if the observing officer did not have a reasonable opportunity to intervene. If the head of the law enforcement agency of the observing officer was involved or present during what the observing officer reasonably believes to be unauthorized use of force, the observing officer shall make the report to the highest ranking law enforcement officer of that officer's agency who was not involved in or present during the use of force."

**SECTION 1.(b)** This section becomes effective December 1, 2021, and applies to uses of force that occur on or after that date.

**SECTION 2.(a)** G.S. 17C-6(a) reads as rewritten:

"(a) In addition to powers conferred upon the Commission elsewhere in this Article, the Commission shall have the following powers, which shall be enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17C-10:

...

(21) Search the National Decertification Index (NDI) maintained by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) using the name of every applicant for certification or applicant for lateral transfer, and any other personal identifying information necessary to complete the search, and shall utilize any record of conviction of a criminal offense received as a result of the search during the application and



\* H 5 3 6 - V - 2 \*

1 lateral transfer process to determine if the applicant has any record that would  
2 disqualify the applicant for certification."

3 **SECTION 2.(b)** G.S. 17E-4(a) reads as rewritten:

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

7 ...  
8 (17) Search the National Decertification Index (NDI) maintained by the  
9 International Association of Directors of Law Enforcement Standards and  
10 Training (IADLEST) using the name of every applicant for certification or  
11 applicant for lateral transfer, and any other personal identifying information  
12 necessary to complete the search, and shall utilize any record of conviction of  
13 a criminal offense received as a result of the search during the application and  
14 lateral transfer process to determine if the applicant has any record that would  
15 disqualify the applicant for certification.

16 ...."

17 **SECTION 2.(c)** This section becomes effective October 1, 2021, and applies to  
18 applications for certification submitted on or after that date.

19 **SECTION 3.(a)** Article 1 of Chapter 17C of the General Statutes is amended by  
20 adding a new section to read:

21 "**§ 17C-16. Requirement to report material relevant to testimony.**

22 (a) Any person who is certified by the Commission or has received a conditional offer of  
23 employment and who has been notified that the person may not be called to testify at trial based  
24 on bias, interest, or lack of credibility shall report and provide a copy of that notification to the  
25 Criminal Justice Standards Division within 30 days of receiving the notification, except as  
26 provided in subsection (h) of this section. This requirement shall only apply if the person is  
27 notified by one of the following methods:

28 (1) In writing by a superior court judge, district court judge, federal judge, district  
29 attorney, assistant district attorney, United States attorney, assistant United  
30 States attorney, or the person's agency head.

31 (2) In open court by a superior court judge, district court judge, or federal judge,  
32 and documented in a written order.

33 (b) The report to the Division shall be in writing and shall state who notified the person  
34 that the person may not be called to testify at trial. A person required to report to the Division  
35 under subsection (a) of this section shall make the same report to the person's agency head within  
36 30 days of being notified that the person may not be called to testify at trial. An agency head who  
37 receives a report that a person in the agency has been notified that they may not be called to  
38 testify at trial shall also report the notification to the Division in writing within 30 days of the  
39 agency head's receipt of that report.

40 (c) A superior court judge, district court judge, federal judge, district attorney, assistant  
41 district attorney, United States attorney, or assistant United States attorney who notifies a person  
42 that they may not be called to testify at trial as provided in subsection (a) of this section shall  
43 report that notification to the Division and provide a copy of the written document or order within  
44 30 days of notifying the person that they may not be called to testify at trial.

45 (d) If the Division transfers to another agency the certification of any person required to  
46 report to the Division pursuant to subsection (a) of this section, the Division shall provide written  
47 notification to both the head of the new agency and the elected district attorney in the  
48 prosecutorial district where the agency is located that the person has been previously notified that  
49 the person may not be called to testify at trial. If the new agency receiving notification pursuant  
50 to this subsection is a State agency, the Division shall notify the elected district attorney in every  
51 prosecutorial district of the State.

1       (e) If any person required to report to the Division pursuant to subsection (a) of this  
2 section is subsequently informed in writing that that notification has been rescinded, the person  
3 shall provide the Division a copy of that document. The provisions of subsection (d) of this  
4 section do not apply if the person required to report pursuant to subsection (a) of this section is  
5 subsequently informed in writing that the notification has been rescinded.

6       (f) No later than March 1 each year, the Commission shall report to the Joint Legislative  
7 Oversight Committee on Justice and Public Safety regarding the number of individuals for whom  
8 the Division received a report required by subsection (a) of this section during the previous  
9 calendar year. The report shall include information for each case on whether a final agency  
10 decision has been entered pursuant to Chapter 150B of the General Statutes and what action, if  
11 any, has been taken against each certification. The report shall not include the name or any other  
12 identifying information of any person required to report pursuant to subsection (a) of this section.

13       (g) The reports and notifications received by the Division pursuant to this section shall  
14 not be public record.

15       (h) Any person who has received a notification that may meet the reporting requirement  
16 provided in subsection (a) of this section may apply for a hearing in superior court for a judicial  
17 determination of whether or not the person received a notification that the person may not be  
18 called to testify at trial based on bias, interest, or lack of credibility. This hearing is limited to  
19 reviewing whether (i) a person who is certified by the Commission or has received a conditional  
20 offer of employment, (ii) has been notified in writing by a superior court judge, district court  
21 judge, federal judge, district attorney, assistant district attorney, United States attorney, or  
22 assistant United States attorney; or notified in open court by a superior court judge, district court  
23 judge, or federal judge, and documented in a written order, and (iii) that notification states that  
24 the person may not be called to testify at trial based on bias, interest, or lack of credibility, not  
25 matters of law or admissibility. The person must provide notice of the hearing to the Division.  
26 One extension of 15 days will be added to the 30-day reporting requirement provided in  
27 subsection (a) of this section if notice of a hearing is received."

28       **SECTION 3.(b)** Chapter 17E of the General Statutes is amended by adding a new  
29 section to read:

30 **"§ 17E-16. Requirement to report material relevant to testimony.**

31       (a) Any person who is certified by the Commission or has received a conditional offer of  
32 employment and who has been notified that the person may not be called to testify at trial based  
33 on bias, interest, or lack of credibility shall report and provide a copy of that notification to the  
34 Justice Officers' Standards Division within 30 days of receiving the notification, except as  
35 provided in subsection (h) of this section. This requirement shall only apply if the person is  
36 notified by one of the following methods:

37           (1) In writing by a superior court judge, district court judge, federal judge, district  
38 attorney, assistant district attorney, United States attorney, assistant United  
39 States attorney, or the person's agency head.

40           (2) In open court by a superior court judge, district court judge, or federal judge,  
41 and documented in a written order.

42       (b) The report to the Division shall be in writing and shall state who notified the person  
43 that the person may not be called to testify at trial. A person required to report to the Division  
44 under subsection (a) of this section shall make the same report to the person's agency head within  
45 30 days of being notified that the person may not be called to testify at trial. An agency head who  
46 receives a report that a person in the agency has been notified that they may not be called to  
47 testify at trial shall also report the notification to the Division in writing within 30 days of the  
48 agency head's receipt of that report.

49       (c) A superior court judge, district court judge, federal judge, district attorney, assistant  
50 district attorney, United States attorney, or assistant United States attorney who notifies a person  
51 that they may not be called to testify at trial as provided in subsection (a) of this section shall

1 report that notification to the Division and provide a copy of the written document or order within  
2 30 days of notifying the person that they may not be called to testify at trial.

3 (d) If the Division transfers to another agency the certification of any person required to  
4 report to the Division pursuant to subsection (a) of this section, the Division shall provide written  
5 notification to both the head of the new agency and the elected district attorney in the  
6 prosecutorial district where the agency is located that the person has been previously notified that  
7 the person may not be called to testify at trial. If the new agency receiving notification pursuant  
8 to this subsection is a State agency, the Division shall notify the elected district attorney in every  
9 prosecutorial district of the State.

10 (e) If any person required to report to the Division pursuant to subsection (a) of this  
11 section is subsequently informed in writing that that notification has been rescinded, the person  
12 shall provide the Division a copy of that document. The provisions of subsection (d) of this  
13 section do not apply if the person required to report pursuant to subsection (a) of this section is  
14 subsequently informed in writing that the notification has been rescinded.

15 (f) No later than March 1 each year, the Commission shall report to the Joint Legislative  
16 Oversight Committee on Justice and Public Safety regarding the number of individuals for whom  
17 the Division received a report required by subsection (a) of this section during the previous  
18 calendar year. The report shall include information for each case on whether a final agency  
19 decision has been entered pursuant to Chapter 150B of the General Statutes and what action, if  
20 any, has been taken against each certification. The report shall not include the name or any other  
21 identifying information of any person required to report pursuant to subsection (a) of this section.

22 (g) The reports and notifications received by the Division pursuant to this section shall  
23 not be public record.

24 (h) Any person who has received a notification that may meet the reporting requirement  
25 provided in subsection (a) of this section may apply for a hearing in superior court for a judicial  
26 determination of whether or not the person received a notification that the person may not be  
27 called to testify at trial based on bias, interest, or lack of credibility. This hearing is limited to  
28 reviewing whether (i) a person who is certified by the Commission or has received a conditional  
29 offer of employment, (ii) has been notified in writing by a superior court judge, district court  
30 judge, federal judge, district attorney, assistant district attorney, United States attorney, or  
31 assistant United States attorney; or notified in open court by a superior court judge, district court  
32 judge, or federal judge, and documented in a written order, and (iii) that notification states that  
33 the person may not be called to testify at trial based on bias, interest, or lack of credibility, not  
34 matters of law or admissibility. The person must provide notice of the hearing to the Division.  
35 One extension of 15 days will be added to the 30-day reporting requirement provided in  
36 subsection (a) of this section if notice of a hearing is received."

37 **SECTION 3.(c)** This section becomes effective October 1, 2021, and applies to  
38 notifications received prior to, on, or after that date by persons required to report pursuant to this  
39 act.

40 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes  
41 law.