**South Carolina General Assembly**

124th Session, 2021-2022

**S. 334**

**STATUS INFORMATION**

General Bill

Sponsors: Senator McLeod

Document Path: l:\s-res\msm\002poli.kmm.msm.docx

Companion/Similar bill(s): 4542

Introduced in the Senate on January 12, 2021

Currently residing in the Senate Committee on **Judiciary**

Summary: Transparency in Justice Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 Senate Prefiled

12/9/2020 Senate Referred to Committee on **Judiciary**

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 271](file:///h:\sj\20210112.docx))

1/12/2021 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 271](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\334_20201209.docx)

**A** **BILL**

TO ENACT THE “TRANSPARENCY IN JUSTICE ACT”; TO AMEND SECTION 63‑19‑2040 OF THE 1976 CODE, RELATING TO THE RELEASE OF THE NAME, IDENTITY, OR PICTURE OF A CHILD UNDER THE JURISDICTION OF THE FAMILY COURT, TO PERMIT THE RELEASE OF THE IDENTITY OF A CHILD UNDER THE JURISDICTION OF THE COURT TO A NEWSPAPER, RADIO, OR TELEVISION STATION IF THE CHILD IS ALLEGED TO HAVE COMMUNICATED A THREAT OF MASS VIOLENCE BY MEANS OF A VIDEO, AUDIO, OR INTERNET-BASED SOCIAL MEDIA COMMUNICATION TO TWO OR MORE PERSONS AND THE CHILD HAS PERSONALLY IDENTIFIED HIMSELF IN THE COMMUNICATION; TO AMEND SECTION 59-24-60 OF THE 1976 CODE, RELATING TO SCHOOL ADMINISTRATORS, TO REQUIRE THAT SCHOOL ADMINISTRATORS MAKE A REASONABLE EFFORT TO CONTACT ALL PARENTS OF STUDENTS WITHIN A REASONABLE TIME PERIOD BUT NOT LATER THAN TWENTY-FOUR HOURS UPON RECEIVING CREDIBLE INFORMATION THAT A PERSON HAS MADE A THREAT OF SERIOUS INJURY TO A PERSON OR PERSONS ON SCHOOL PROPERTY OR AT A SCHOOL-SPONSORED ACTIVITY, OR A THREAT TO SERIOUSLY DAMAGE OR DESTROY SCHOOL PROPERTY; TO AMEND ARTICLE 7, CHAPTER 3, TITLE 16 OF THE 1976 CODE, RELATING TO ASSAULTS, BY ADDING SECTION 16-3-605, TO PROVIDE THAT IT IS UNLAWFUL TO WILLFULLY CAUSE BODILY INJURY OR DEATH TO A PERSON OR ATTEMPT OR THREATEN TO CAUSE BODILY INJURY OR DEATH THROUGH THE USE OF A FIRE, A FIREARM, A DANGEROUS WEAPON, OR A DESTRUCTIVE DEVICE, BECAUSE OF THE ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, OR NATIONAL ORIGIN OF ANY PERSON AND TO PROVIDE PENALTIES AND DEFINITIONS; TO AMEND SECTION 17-13-20 OF THE 1976 CODE, RELATING TO CIRCUMSTANCES IN WHICH A CITIZEN MAY CONDUCT A CITIZEN’S ARREST, TO PROVIDE THAT A CITIZEN MAY ONLY ARREST A PERSON IN THE NIGHTTIME AS NECESSARY IF THE PERSON HAS ENTERED A DWELLING HOUSE WITHOUT EXPRESS OR IMPLIED PERMISSION; TO REPEAL SECTION 17-13-10, RELATING TO CIRCUMSTANCES IN WHICH A CITIZEN MAY CONDUCT A CITIZEN’S ARREST; TO AMEND CHAPTER 13, TITLE 17 OF THE 1976 CODE, RELATING TO ARREST, PROCESS, SEARCHES, AND SEIZURES, BY ADDING SECTION 13-17-42, TO PROVIDE THAT IT IS UNLAWFUL FOR A LAW ENFORCEMENT OFFICER TO USE A CHOKEHOLD OR CAROTID HOLD; TO AMEND CHAPTER 13, TITLE 17 OF THE 1976 CODE, RELATING TO ARREST, PROCESS, SEARCHES, AND SEIZURES, BY ADDING SECTION 13-17-155, TO PROVIDE THAT A LAW ENFORCEMENT OFFICER SHALL NOT SEEK OR EXECUTE A NO-KNOCK WARRANT; TO AMEND CHAPTER 23, TITLE 23 OF THE 1976 CODE, RELATING TO THE LAW ENFORCEMENT TRAINING COUNCIL AND CRIMINAL JUSTICE ACADEMY, BY ADDING SECTION 23-23-45, TO PROVIDE THAT THE CRIMINAL JUSTICE ACADEMY MUST REQUIRE DE-ESCALATION TRAINING AND CONTINUING LAW ENFORCEMENT EDUCATION CREDITS IN DE-ESCALATION TRAINING; TO AMEND CHAPTER 1, TITLE 23 OF THE 1976 CODE, RELATING TO LAW ENFORCEMENT AND PUBLIC SAFETY, BY ADDING SECTION 23-1-250, TO PROVIDE THAT A LAW ENFORCEMENT AGENCY MAY NOT RECEIVE CERTAIN PROPERTY FROM A MILITARY EQUIPMENT SURPLUS PROGRAM AND MAY ONLY PURCHASE PROPERTY FROM A MILITARY EQUIPMENT SURPLUS PROGRAM USING STATE OR LOCAL FUNDS AND TO ESTABLISH REPORTING REQUIREMENTS; TO AMEND SECTION 23-23-60 OF THE 1976 CODE, RELATING TO CERTIFICATES OF COMPLIANCE FOR LAW ENFORCEMENT OFFICER CANDIDATES, TO PROVIDE THAT LAW ENFORCEMENT AGENCIES SHALL REPORT INFORMATION RELATING TO CANDIDATE INVOLVEMENT WITH WHITE SUPREMACIST GROUPS; TO AMEND CHAPTER 1, TITLE 23 OF THE 1976 CODE, RELATING TO LAW ENFORCEMENT AND PUBLIC SAFETY, TO PROVIDE FOR CIVIL LIABILITY FOR A DEPRIVATION OF RIGHTS BY A LAW ENFORCEMENT OFFICER, AND TO ELIMINATE QUALIFIED IMMUNITY FOR LAW ENFORCEMENT OFFICERS FOR ACTIONS BROUGHT RESULTING FROM A DEPRIVATION OF RIGHTS; AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be known and cited as the “Transparency in Justice Act”.

SECTION 2. Section 63‑19‑2040 of the 1976 Code is amended to read:

“Section 63‑19‑2040. (A) For the purposes of this section:

(1) ‘Mass violence’ means the death or serious bodily injury of two or more persons in a single incident on public property or at a public building; a public or private school; a public park; or any publicly accessible business, school, church, or gathering place.

(2) ‘Publicly disseminated’ means electronically communicated or transmitted to two or more people.

(B) The name, identity, or picture of a child under the jurisdiction of the court, pursuant to this chapter, must not be provided to a newspaper or radio or television station unless:

(1) authorized by court order;

(2) the solicitor has petitioned the court to waive the child to circuit court;

(3) the child has been bound over to a court which would have jurisdiction of the offense if committed by an adult; ~~or~~

(4) the child has publicly disseminated within a video, audio, or photographic communication a threat to commit or a threat to cause or aid the commission of mass violence with the present ability to carry out the threat, regardless of whether the threat is carried out, and has personally identified himself, to include, but not to be limited to, the showing of his face or the stating of his name, nickname, or social media username, within the communication or within related or attached communications; or

(5) the child has been adjudicated delinquent in court for one of the following offenses:

(a) a violent crime, as defined in Section 16‑1‑60;

(b) grand larceny of a motor vehicle;

(c) a crime in which a weapon, as defined in Section 59‑63‑370, was used; or

(d) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

~~(B)~~(C) When a child is bound over to the jurisdiction of the circuit court, the provisions of this section pertaining to the confidentiality of fingerprints and identity do not apply.

~~(C)~~(D) The provisions of this section do not prohibit the distribution of information pursuant to the provisions of Article 7, Chapter 3 of Title 23.”

SECTION 3. Section 59-24-60 of the 1976 Code is amended to read:

“Section 59-24-60. (A) In addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy.

(B) School administrators must make a reasonable effort to contact all parents of students within a reasonable time period but not later than twenty-four hours upon receiving credible information that a person has made a threat that may result or has resulted in serious injury to a person or persons on school property or at a school-sanctioned or sponsored activity, or if the threat may result or has resulted in serious damage to or the destruction of school property.

(C) The provisions contained in this section apply to both public and private schools.”

SECTION 4. Article 7, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16-3-605. (A) For the purposes of this section:

(1) ‘Destructive device’ means a destructive device as defined under Section 16-23-710(7).

(2) ‘Firearm’ means a weapon that is designed to or may readily be converted to expel a projectile by the action of an explosive, or the frame or receiver of that weapon.

(B) It is unlawful for a person to willfully cause bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or a destructive device, to attempt or threaten to cause bodily harm or injury to any person because of the actual or perceived race, color, religion, sex, sexual orientation, or national origin of that person.

(C) A person who violates a provision of subsection (B) is guilty of a felony and, upon conviction, must be fined in the discretion of the court, be imprisoned for not more than ten years, or both.

(D) A person who violates a provision of subsection (B) is guilty of a felony and, upon conviction, shall be imprisoned for up to life if death results or if the offense includes kidnapping or an attempt to kidnap, an act of criminal sexual conduct or an attempt to commit criminal sexual conduct, or attempted murder.

(E) A sentence imposed pursuant to the provisions of this section is in addition to any other sentence imposed for another offense, and any sentence imposed pursuant to the provisions of this section must be served consecutively.”

SECTION 5. A. Section 17‑13‑20 of the 1976 Code is amended to read:

“Section 17-13-20. A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person~~:~~

~~(a)~~ ~~has committed a felony;~~

~~(b)~~ has entered a dwelling house without express or implied permission~~;~~

~~(c)~~ ~~has broken or is breaking into an outhouse with a view to plunder;~~

~~(d)~~ ~~has in his possession stolen property; or~~

~~(e)~~ ~~being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed~~.”

B. Section 17‑13‑10 of the 1976 Code, relating to circumstances in which a citizen may conduct a ‘citizen’s arrest,’ is repealed.

SECTION 6. Chapter 13, Title 17 of the 1976 Code is amended by adding:

“Section 13-17-42. (A) For the purposes of this section, the term ‘chokehold or carotid hold’ means the application of any pressure to the throat or windpipe, a maneuver that restricts blood or oxygen flow to the brain, or a carotid artery restraint that prevents or hinders breathing or reduces the intake of air by an individual.

(B) It is unlawful for a law enforcement officer to use a chokehold or carotid hold except as provided in subsection (C).

(C) The use of a chokehold or carotid hold is only justifiable if a law enforcement officer reasonably believes that the use of deadly force is necessary to protect the life of a civilian or a law enforcement officer.

(D) In addition to any other penalty provided by law, a violation of subsection (B) is grounds for disciplinary action against the law enforcement officer, including dismissal, demotion, suspension, or transfer.”

SECTION 7. Chapter 13, Title 17 of the 1976 Code is amended by adding:

“Section 13-17-155. (A) For the purposes of this section, ‘no‑knock warrant’ means a search warrant that, regardless of whether it contains the precise phrase ‘no‑knock,’ allows a law enforcement officer to enter a property without requiring the law enforcement officer to announce the presence of the law enforcement officer or the intention of the law enforcement officer to enter the property.

(B) A law enforcement officer shall not seek or execute a no‑knock warrant, and a court shall not issue such a warrant. A violation of this subsection is grounds for disciplinary action against the law enforcement officer, including dismissal, demotion, suspension, or transfer.”

SECTION 8. Chapter 23, Title 23 of the 1976 Code is amended by adding:

“Section 23-23-45. (A) The director must require de-escalation training as part of the academy’s prescribed training courses to certify law enforcement officers.

(B) A law enforcement officer certified in this State is required to complete Continuing Law Enforcement Education Credits (CLEEC) in de-escalation training annually. The number of required annual CLEEC hours in de-escalation training shall be determined by the council. The training must be provided or approved by the academy and must include, but is not limited to, the following curriculum: verbal de-escalation, conflict management communication skills, common barriers to effective communication, deflecting and redirecting verbal abuse, establishing rapport, responding to crime scenes, Fourth Amendment issues, incident report writing, interviewing techniques, crisis situation response in which an individual is experiencing a mental health or addictive disorder crisis, mental health courts and mental health court programs, offender treatment programs, and recognizing special needs populations.”

SECTION 9. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23-1-250. (A) For this section, ‘law enforcement agency’ means a law enforcement service provided by a local or state government.

(B) A law enforcement agency may not receive the following property from a military equipment surplus program operated by the federal government:

(1) drones that are armored, weaponized, or both;

(2) aircraft that are combat-configured or combat-coded;

(3) grenades, similar explosives, or grenade launchers;

(4) silencers; or

(5) militarized armored vehicles.

(C) If a law enforcement agency purchases property from a military equipment surplus program operated by the federal government, then the law enforcement agency may only use state or local funds for the purchase. Funds obtained from the federal government may not be used to purchase property from a military equipment surplus program.

(D) If a law enforcement agency requests property from a military equipment surplus program, then the law enforcement agency shall publish a notice of the request on a publicly accessible website within fourteen days after the request.”

SECTION 10. Section 23-23-60 of the 1976 Code is amended to read:

“Section 23-23-60. (A) At the request of any public law enforcement agency of this State the council is hereby authorized to issue certificates and other appropriate indicia of compliance and qualification to law enforcement officers or other persons trained under the provisions of this chapter. Members of the council may individually or collectively visit and inspect any training school, class, or academy dealing with present or prospective law enforcement officers, and are expected to promote the most efficient and economical program for police training, including the maximum utilization of existing facilities and programs for the purpose of avoiding duplication. The council may make recommendations to the director, the General Assembly, or to the Governor regarding the carrying out of the purposes, objectives, and intentions of this chapter or other acts relating to training in law enforcement.

(B) All city and county police departments, sheriffs' offices, state agencies, or other employers of law enforcement officers having such officers as candidates for certification shall submit to the director, for his confidential information and subsequent safekeeping, the following:

(1) an application under oath on a format prescribed by the director;

(2) evidence satisfactory to the director that the candidate has completed high school and received a high school diploma, equivalency certificate (military or other) recognized and accepted by the South Carolina Department of Education or South Carolina special certificate;

(3) evidence satisfactory to the director of the candidate's physical fitness to fulfill the duties of a law enforcement officer including:

(a) a copy of his medical history compiled by a licensed physician or medical examiner approved by the employer;

(b) a certificate of a licensed physician that the candidate has recently undergone a complete medical examination and the results thereof;

(4) evidence satisfactory to the director that the applicant has not been convicted of any criminal offense that carries a sentence of one year or more or of any criminal offense that involves moral turpitude. Forfeiture of bond, a guilty plea, or a plea of nolo contendere is considered the equivalent of a conviction;

(5) evidence satisfactory to the director that the applicant does not pose a threat to law enforcement with regard to infiltration or recruitment by white supremacist groups. The director must consider evidence including, but not limited to, a review of the applicant’s social media activity, in order to determine any potential risk of investigative breaches or any potential threat to the safety of law enforcement sources and personnel, restricted areas vulnerable to sabotage, and elected officials or protected persons;

(6)(a) evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to:

~~(a)~~(i) certification by the candidate's employer that a background investigation has been conducted and the employer is of the opinion that the candidate is of good character;

~~(b)~~(ii) evidence satisfactory to the director that the candidate holds a valid current state driver's license with no record during the previous five years for suspension of driver's license as a result of driving under the influence of alcoholic beverages or dangerous drugs, driving while impaired (or the equivalent), reckless homicide, involuntary manslaughter, or leaving the scene of an accident. Candidates for certification as state or local correctional officers may hold a valid current driver's license issued by any jurisdiction of the United States;

~~(c)~~(iii) evidence satisfactory to the director that a local credit check has been made with favorable results;

~~(d)~~(iv) evidence satisfactory to the director that the candidate's fingerprint record as received from the Federal Bureau of Investigation and South Carolina Law Enforcement Division indicates no record of felony convictions.

(b) In the director's determination of good character, the director shall give consideration to all law violations, including traffic and conservation law convictions, as indicating a lack of good character. The director shall also give consideration to the candidate's prior history, if any, of alcohol and drug abuse in arriving at a determination of good character;

~~(6)~~(7) a copy of the candidate's photograph;

~~(7)~~(8) a copy of the candidate's fingerprints;

~~(8)~~(9) evidence satisfactory to the director that the candidate's present age is not less than twenty‑one years. This evidence must include a birth certificate or another acceptable document;

~~(9)~~(10) evidence satisfactory to the director of successful completion of a course of law enforcement training as established and approved by the director, and conducted at an academy or institution approved by the director, this evidence to consist of a certificate granted by the approved institution.

(C)(1) A certificate as a law enforcement officer issued by the council will expire three years from the date of issuance or upon discontinuance of employment by the officer with the employing entity or agency.

(2) Notwithstanding the provisions of item (1), a certificate may not expire if employment is discontinued because of the officer's absence from work due to a disability he sustained in that employment for which he receives workers' compensation benefits and from which he has not been authorized to return to work without restriction; provided, however, that before he may resume employment for which the certificate is required, he must complete all continuing education requirements for the period of time in which he was receiving workers' compensation benefits and had not been authorized to return to work. Additionally, the three‑year duration of a certificate is tolled during such an absence from employment, and begins running when the officer is authorized to return to work without restriction.

(3) Prior to the expiration of the certificate, the certificate may be renewed upon application presented to the director on a form prescribed by the director. The application for renewal must be received by the director at least forty‑five days prior to the expiration of the certificate.

(4) If the officer's certificate has lapsed, the council may reissue the certificate after receipt of an application and if the director is satisfied that the officer continues to meet the requirements of subsection (B)(1) through ~~(9)~~(10).

(D) The director may accept for training as a law enforcement officer an applicant who has met requirements of subsection (B)(1) through ~~(8)~~(9).”

SECTION 11. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23-1-250. (A) A state or local law enforcement officer who, while acting under color of law, deprives a person of rights, privileges, or immunities secured by the South Carolina Constitution or the laws of this State is liable to the injured party for legal or equitable relief or any other appropriate relief.

(B)(1) Statutory immunities and limitations on liability, damages, or attorneys’ fees do not apply to claims brought pursuant to this section. The provisions contained in Chapter 78, Title 15, the South Carolina Tort Claims Act, do not apply to claims brought pursuant to this section.

(2) In claims brought pursuant to this section, it is not a defense that, nor is a defendant immune from liability because:

(a) the defendant was acting in good faith, or the defendant believed, reasonably or otherwise, at the time of his conduct that the conduct was lawful; or

(b) the rights, privileges, or immunities secured by the South Carolina Constitution or the laws of this State were not clearly established at the time of their deprivation by the defendant, or the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his conduct was lawful.

(C) In any action brought pursuant to this section, a court shall award reasonable attorneys’ fees and costs to a prevailing plaintiff. If a judgment is entered in favor of a defendant, then the court may award reasonable attorneys’ fees and costs to the defendant for defending any claims that the court finds frivolous.

(D) A civil action pursuant to this section must be filed within two years after a cause of action occurs.”

SECTION 12. This act takes effect upon approval by the Governor.

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