



## Law Enforcement Liability

South Carolina City and County  
Management Association

Todd Williams



## Law Enforcement Stakeholders Meeting

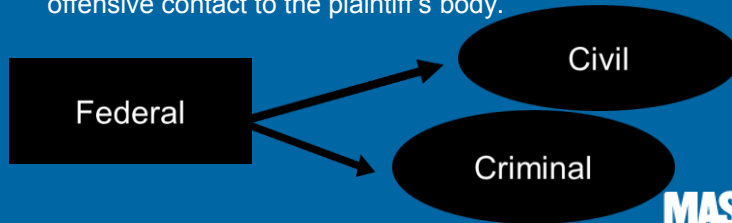
- Increase law enforcement training
- Support reliable funding for the Criminal Justice Academy to allow for more training opportunities for law enforcement officers.
- Increase funding for body worn cameras





## Civil Actions

- Intentional Torts: An intentional tort would occur when an officer, without justification, intentionally commits an act which is recognized by the law as a tort.
- For example, if an officer were to use his baton to intentionally strike someone who had done nothing wrong. In the law of torts this would be recognized as a battery. In order to prove a battery; the plaintiff must prove that the officer intentionally caused a harmful or offensive contact to the plaintiff's body.



## Civil Actions

- Negligence Actions: Another type of tort for which an officer may be sued is the tort of negligence. There are four basic elements of a negligence action.
  - A duty owed- All persons generally have a duty to act with reasonable care toward those they come into contact with.
  - A breach of the duty-A person breaches their duty when they fail to exercise reasonable care.
  - Causation- The breach of duty must be the cause in-fact and the proximate cause of the plaintiff's injury.
  - Damages-The plaintiff must suffer some damages as a result of the breach of duty.



## Violation of Civil Rights- 42 U.S.C. sec. 1983.

- Provides citizens with a remedy for redressing violations of civil rights.
- Mechanism for enforcing rights that are granted by the United States Constitution or by a federal statute.
- Plaintiff must establish that a violation of the Constitution or some federally established right has occurred as a result of some action that was taken under color of state law.



## Violation of Civil Rights- 42 U.S.C. sec. 1983.

### Elements

- Violation of constitutional or federally protected right.
- Violation must have occurred as a result of some action taken under color of state law. A misuse of power possessed by virtue of state law and made possible only because the actor is colored with authority of state law constitutes color of law.
- The plaintiff must have suffered some damages.
  - Courts will sometimes grant “nominal” damages of \$1.00 in order to vindicate a plaintiff’s rights.



## Violation of Civil Rights- 42 U.S.C. sec. 1983.

- Agency as the defendant - the plaintiff has to prove
  - Agency did something wrong that led the officer to act in the manner that he or she did.
  - Officer violated the plaintiff's civil rights.
  - Agency was the moving force behind the officer's actions
    - bad or no policy
    - bad custom or practice
    - bad or no training
    - bad or no supervision
    - bad or no discipline.



## Pattern and Practice Lawsuit

Under 42 USC §14141 it is unlawful for a law enforcement agency to allow its members to participate in a pattern and practice of violating civil rights.

- “The types of issues which may initiate a pattern and practice investigation include:
  - Lack of supervision/monitoring of officers' actions;
  - Lack of justification or reporting by officers on incidents involving the use of force;
  - Lack of, or improper training of, officers; and
  - Citizen complaint processes that treat complainants as adversaries.



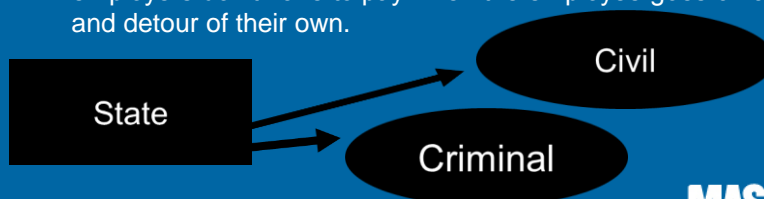
## Summary Judgement and Qualified Immunity

- Summary Judgment: Even if the person bringing the lawsuit story is taken as true there was no violation of the Constitution.
- Qualified Immunity: Even if the person bringing the lawsuit story is taken as true and there was a violation of the Constitution, the law was not clearly established at the time the officer acted.



## Violation of State Tort

- “Vicarious liability” indicating that an employer is responsible for harms caused by their employees while the employee is acting in the scope of their employment. “Let the Boss Pay!”
- There are times when an employee does something, even during work hours, that is outside the scope of employment, in which case the employer is not required to pay the damages. This exception is often referred to as a “frolic and detour” due to the fact that employers don’t have to pay when the employee goes on a frolic and detour of their own.





## What are the liabilities of law enforcement operations?



## Liabilities

- |                               |   |
|-------------------------------|---|
| Policy and Procedure          | Failure to respond to a crime                 |
| Response to Active Resistance | Failure to protect informants                 |
| Excessive Force               | Failure to warn of danger                     |
| Vehicle Operations - Pursuits | Failure to arrest a dangerous motorist        |
| Mutual Aid Policies           | Negligent release                             |
| Detention Center Operations   | Failure to protect someone in custody         |
| False Arrest                  | Failure to render aid                         |
| Human Resources               | Failure to protect property in evidence       |
| Harassment                    | Mishandling of persons of diminished capacity |
| Discrimination                | Excessively severe restraints                 |
| Property Exposure             | Command dog attacks or bites                  |
| – Cars                        | Injuries to officers                          |
| – Buildings                   | Fighting with suspects                        |
| – Equipment                   | Car Accidents / Death                         |
|                               | Harassment                                    |



# Why is Policy so Important?



# Policy Challenges

 <b>SCMIRF</b> South Carolina Municipal Insurance and Risk Financing Fund		
Policy #	Related Policies:	
<b>Response to Resistance</b> <small>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only be the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</small> Applicable State Statutes:		
CALFA Standard: 1.3.1, 1.3.2, 1.3.5, 1.3.6, 1.3.7, 1.3.10, 26.1.1		
Date Implemented:	Review Date:	
I. <b>Purpose:</b> The purpose of this policy is to direct officers in the appropriate use of force. II. <b>Policy:</b> The policy of this department is to protect and serve all citizens while at the same time respecting the rights of suspects and balancing the need for officer safety in use of force events. It is the policy of this department that officers will use only reasonable force to bring an incident or event under control. Reasonable force is only that force which is necessary to accomplish lawful objectives. All uses of force must be objectively reasonable. III. <b>Definitions:</b>		

*Outdated Policies*

*Lack of Consistency*

*Lack of Accountability*

*Time-Consuming Updates*

*Lack of Training on Department*



## Standard Operating Policy

Develop and issue a department-specific policy and procedures manual to assist law enforcement officers in the safe and proper execution of their duties.



## *12 Critical High Risks Tasks*

This manual should include the following:

- 1. Use of force/response to resistance.
- 2. Pursuit/emergency operation of vehicles.
- 3. Search and seizure/arrest.
- 4. Property and evidence.
- 5. Care, custody, restraints and transportation of prisoners.
- 6. Domestic violence and agency employee involved domestic violence.
- 7. Off-duty conduct of officers/off-duty paid details.
- 8. Sexual harassment/sexual misconduct by officers.
- 9. Selection and hiring.
- 10. Complaints and internal affairs investigations.
- 11. Special operations: SWAT, narcotics, high-risk warrants service.
- 12. Dealing with mentally ill, emotionally disturbed persons, and persons with diminished capacity.





## Risk Management Services

Policy and Procedure	Based on Professional Thinking, Best Practices and Law
Training	Policies must be trained
Supervision	Catch an officer doing something right and wrong
Weak Link but essential	Commitment to selection followed by Performance Evaluation
Review and Revision	Constant review of what is happening within the agency.
Legal Counsel and Updates	



## Risk Management Services

### Response to Active Resistance

- *4th Amendment – Right to be free from Unreasonable Seizures*
- **Graham v. Conner** - foundation case on all use of force
  - Objective Reasonableness – officer’s actions were reasonable in the light of the facts and circumstances confronting him
  - All uses of force, deadly and non-deadly, are to be judged by the totality of the circumstances.
  - The totality of the circumstances to be considered are only those circumstances known to the officer at the time the force was used without the benefit of 20/20 hindsight. (Moment vs Pre-Events)
  - Split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving must be taken into account



## Response to Active Resistance

### *Graham v. Conner*

### 3 Factor Test

1. How serious was the offense that the officer suspected was or had been committed?
2. Did the suspect pose an immediate physical threat to the officer or some other person present at the scene?
3. Was the suspect actively resisting or attempting to evade arrest by flight?



## Response to Active Resistance

### • *Tennessee v. Garner*

- Imminent danger of serious bodily harm or death to the officer or some third party who is present at the scene.
- Prevent escape where the officer had probable cause to believe that the fleeing suspect had been involved in a violent felony involving the infliction or threatened infliction of serious bodily harm or death. (Reasonable Seizure under the 4<sup>th</sup> Amendment)
- The Court also asserted that officers should give a WARNING where feasible.



## Response to Active Resistance

### Less-lethal force devices

- Not to be used on passive resisters or resistant individuals,
- Used when an individual's actions create an immediate safety risk that can be mitigated by the use of force
- Serious Injurious Force.
- Force must be reasonable, proportional and minimal to gain control
- Policy must also prohibit non-approved weapon systems and equipment.
- Estate of Armstrong v. Village of Pinehurst, 4th Cir. (2016) incorporated into department policies and training.



## Response to Active Resistance

### Minimize Risk through Training and Resources:

- Enhance discretion in using less-lethal options
- De-escalation (very important)
- Force continuum that starts with officer presence and progresses up to deadly force
- Initial and annual training by a certified instructor on the proper use and legal authority for all weapons system issued and policy
- Scenario-based training, lecture, demonstration of skills and legal comprehension



## Response to Active Resistance

### Minimize Risk through Training and Resources:

New IACP model Policy

Shooting into vehicles

Firearms shall not be discharged at moving vehicles unless:

1. a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle;
2. the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.



## Response to Active Resistance

- Documentation
  - Officer
  - Supervisor (Can he/she answer the question?)
- Key to ensuring the force was reasonable and justifiable according to the requirements of cases such as *Graham v. Connor* 490 U.S. 386, (1989) and *Tennessee v. Garner* 471 U.S. 1, (1985).
- City leaders should review the number of response to active resistance (use of force) incidents each year.
- Law enforcement should educate city leaders on use of force and explain the different levels of force. It is important to interpret the data instead of merely focusing on the number of incidents.



## *Los Angeles County v. Mendez*

### **U.S. Supreme Court will decide case on reasonable use of force**

A California case headed for the U.S. Supreme Court calls into question reasonable use of force in keeping with the Ninth Circuit's "provocation" rule. Undisputed facts in [Los Angeles County v. Mendez](#) are that officers used reasonable force when they shot Angel Mendez; however, officers entered Mendez's home unannounced and without a warrant. Mendez and his wife were shot by officers after Mendez produced a BB gun as the officers entered the residence.



## Vehicle Operations

### Policies and Procedures

- Reviewed annually
- Department specific
- Technique specific (do not include non-approved/trained)
- Updated anytime a new technique is adopted
- Updated with new case law or legislation



## Vehicle Operations

### Training

- Annual
- Classroom instruction
- Over the road course at highway speeds
- Precision driving course at low speeds / backing

### Topics

- Safe pursuit operations
- Initiation and discontinuation of a pursuit
- Roles and responsibilities of the officer and supervisor
- Personal accountability / Legals
- Traffic incident management
- Vehicle design, operation, and limitations



## Vehicle Operations

### Documentation

- Review reports
  - Liability issues
  - Safety issues
  - Reasonable and justifiable according to law and agency policy
- City leaders should review the number of vehicle pursuit incidents
- Traffic Tickets and Warnings



## Vehicle Operations

### Fourth and Fourteenth Amendments

#### *Scott v. Harris*

Officer did not violate the Fourth Amendment by ramming the car of a fugitive whose reckless driving “posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase.” (P.I.T. , Stop Sticks, Rolling Blockade)

#### *Plumhoff v. Rickard*

Reaffirmed Scott by holding that an officer acted reasonably when he fatally shot a fugitive who was “intent on resuming” a chase that “posed a deadly threat for others on the road.”



## Vehicle Operations

### *Sacramento v. Lewis*

- A violation of due process occurs only when the police officer has a “purpose to cause harm unrelated to the legitimate object of arrest.” It must be this type of purposeful harm in order to shock the conscience.
  - Speeding motorcycle, 75 second 100mph pursuit for 1.3 miles
  - Motorcycle tipped over leaving passenger, 16 year old Phillip Lewis in the path of the cruiser. Cruiser propelled Lewis 70 feet to his death
- “We are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people’s lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by recklessness.”



## Vehicle Operations

### *Brower v. Inyo County*

- Cessation of movement by force through a means intentionally applied. (Roadblock)
  - Consistent with the Fourth Amendment, a seizure occurs when governmental termination of a person's movement is effected through means intentionally applied. Because the complaint alleges that Brower was stopped by the instrumentality set in motion or put in place to stop him, it states a claim of Fourth Amendment "seizure." Pp. 489 U. S. 595-599.
  - Unreasonableness alleged consists of setting up the roadblock in such a manner as to likely kill.



## Vehicle Operations

*Clark v. S.C. DPS* (S.C. App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573).

- Police officers have a duty to apprehend those who violate the law, and the decision to commence or continue pursuit of a fleeing suspect is, by necessity, made rapidly. However, a police officer's paramount duty is to protect the public. Circumstances may exist when it is reasonable for a police officer to adopt a course of conduct which causes a high risk of harm to the public. Nevertheless, such conduct is not justified if the public is subjected to unreasonable risks of injury as the police carry out their duties.
- *Johnson, nearly "t-boned" a vehicle as he sped through an intersection against the traffic signal. At some point Johnson attempted to pass a pickup truck. In doing so, he went left of center and struck a car driven by Amy Clark head-on. Amy Clark was killed in the crash. Two on-duty supervisors did not supervise the pursuit.*
- Jury awarded the Clark family 3.75 million dollars in damages. The jury found that Johnson was 80% at fault and thus, responsible for 3 million dollars of the damage and SCDPS responsible for 20% of the damages based on the lack of supervisory involvement in the pursuit. This award of \$750,000 was reduced by the court to "\$250,000 in accordance with the limit imposed by the Tort Claims Act."





## Vehicle Operations

S.C. Code of Law 56-5-760

Emergency vehicle drivers have a higher standard to the public and must make every attempt possible to provide due regard for the safety of others.



## Vehicle Operations

### Considerations

- High Risk/High Frequency Task
- Must be supported by policy and training
- Must be supervised and disciplined
- Need to apprehend or serious offense
- Known persons – “Get a warrant”
- Youth and inability or immaturity to handle vehicle in light of intervention tactic
- Vehicle operability / condition
- Passengers
- Traffic / Area
- Time of the day
- Weather



## Mutual Aid Agreements

- Review mutual aid agreements and/or task force agreements
- Municipal council must vote on to enter agreements or vote to grant the authority for their designee to enter into the agreements
- Sheriffs may sign agreements without a county council vote
- No longer a statute that allows for the verbal temporary transfer of authority
- The only exception is when an officer is in distress or requests assistance/back up (SC Code of Law 17-13-45)



## Mutual Aid Agreements

- Reference *State v. Boswell*, 391 S.C. 592, 707 S.E.2d 265 (2011); *State v. Harris*, 299 S.C. 157, 159, 382 S.E.2d 925, 926 (1989);
- SC Code of Law 23-20-10; SC Code of Law 23-20-20; SC Code of Law 23-20-30; SC Code of Law 23-20-40; SC Code of Law 17-13-45 and SC Code of Law 23-20-60.
- Note: repealed sections 23-20-50; 23-1-210; 23-1-215



## Non-certified Law Enforcement Officers

- South Carolina law allows for the hiring of non-certified law enforcement officers.
- Departments should establish a program/policy limiting uncertified officers to non-enforcement activities until the SCCJA certifies the officer.
- The law may allow the officer to perform enforcement activities if statute 23-23-40 is met, however substantial liability applies if the officer is not properly trained.
- 72/72 rule



## Reserve Police Officers

- Authority in Chapter 28, Title 23 of the S.C. Code of Laws.
- Non-paid volunteer, appointed by the agency head
- Must successfully complete the S.C. Reserve Officer Training Program
- Annual application due by July 15 and anytime there is a change to the program such as new chief of police or new reserve liaison.
- Must be in proximate contact, by radio or another device, with the full-time officer to whom he/she is assigned at all times.
- Cannot supervise or direct activities of Class 1 or Class 3 officers



## Reserve Police Officers

- Required to work 20 hours per month or 60 hours per quarter
- Duty time consists of
  - routine patrol and response activities,
  - special events (non-paid), and
  - administrative duties at law enforcement agencies.
- Duty time does NOT consist of
  - training (monthly, annual, etc.),
  - commuting to and from duty, or
  - working in a paid, non-law enforcement position or at reserve officer's regular employment.
- Should enact a program/policy establishing the proper supervision, job functions and limitations of reserve police officers. (pursuits / interstate assignments)



## Diminished Capacity

- Review the training your officers are receiving from the SCCJA, in-service training or specialized program offerings
- Training should include realistic scenario segments involving elements of diffusing tactics (containment, coordination of resources and command, communication strategies, and elongation of the time of the encounter)
- Create a partnership with your local mental health professionals



## Diminished Capacity

- Ensure policies and procedures are up-to-date and include the essential elements of handling by field officers of this special population with emphasis on diffusing field tactics;
- Develop a reporting format that will capture data on field encounters involving this special population. (This could become very important should your agency end up with a fatal or serious injury encounter involving a member of this special population. This type of documentation would show that your officers normally handle these types of incidents successfully without injury.)
- Not all encounters with emotionally disturbed, mentally ill persons will end peacefully or with the professional treatment necessary for his/her special needs. The tactical approach of the officers can assist in bringing these critical tasks to a successful conclusion. In those rare instances when they don't, these steps may enhance the liability protection for your employees, agency and community.



## Filming of Officers

### 1<sup>st</sup> Amendment Rights



## Social Networking

### *Liverman v. Petersburg*



## Social Networking

*Steps that a court will apply in deciding whether an officer, or any public employee's speech is protected by the First Amendment:*

1. Is the speech about a matter that would be of public concern? Note, speech that is purely personal is not protected and any review will end if the court determines that the speech is purely personal
2. If the court has determined that the speech is a matter of public concern, the court will turn to a balancing of the employee's interest as a citizen in commenting on the matter of public concern versus the interests of the law enforcement agency (or any governmental entity) "in promoting the efficiency of the public services it performs through its employees."
3. Note: Speech that is found to be disruptive to the law enforcement operation may be subject to restriction even if it is a matter of public concern.



## Social Networking

First, the court found that the officers were speaking on a matter of public concern rather than a matter that was personal in nature. The court noted that others joining the discussion on Facebook served as evidence that inexperienced instructors or supervisor within the police department was a matter of public concern.

Second, the court looked at balancing the public interest of inexperienced trainers and supervisors versus the disruption to the Police Department by a public airing of this issue. The court then found that Chief Dixon failed to establish that the officers' "social media comments would meaningfully impair the efficiency of the workplace."

Due to the fact that the department could not establish that the comments would meaningfully impair the efficiency of the department, the court concluded that the discipline given to the officers was unconstitutional.

Finally, the court found that the law was clearly established and therefore Chief Dixon was not entitled to Qualified Immunity.



## Social Networking

*The Petersburg Police Department Policy was Unconstitutional due to the Negative Comments Provision that states:*

*"Negative comments on the internal operations of the Bureau, or specific conduct of supervisors or peers that impacts the public's perception of the department is not protected by the First Amendment free speech clause, in accordance with established case law."*

*This court determined this provision was overbroad and would restrict speech/expression that was protected by the First Amendment*

*The discipline given to these officers was unconstitutional because they were:*

- 1. Speaking on a Matter of Public Concern AND*
- 2. The Chief did not establish that the comments would Meaningfully Impair the Efficiency of the Police Department.*

Agencies should review Social Networking Policies and any policy limiting employee speech/expression to determine if there are provisions within the policy which would prohibit protected speech that would not impact agency operations.



## Facebook



## Uploading Pictures and Videos

- Crime Scenes
- Accident photographs
- Victim photographs
- Law enforcement humor
- Sexual postings
- Racial postings
- Law enforcement activity
- Social events
- Weaponry





## Selection and Hiring

- Protecting and serving the public, maintaining order and minimizing liability all start with the selection of qualified candidates. The process must be objective, consistent and equally applied to all candidates. In addition, the process must be compliant with all applicable federal and state laws and South Carolina Criminal Justice Academy's requirements.
- Departments should establish a structured hiring policy and job description for all law enforcement officers: Class 1, Class 2, Class 3, and reserve officers.



## Selection and Hiring

- Recruitment
- Application
- Physical and aptitude ability testing (11<sup>th</sup> Grade Level)
- Oral interview
- Background investigation
- Conditional offer
- Medical testing
- Drug testing
- Psychological testing
- Polygraph testing
- Candidate disqualification
- Final hiring decision.
-



## Selection and Hiring

- The SCCJA requirements and hiring forms can be viewed on their website at [www.sccja.sc.gov](http://www.sccja.sc.gov). Agencies must notify the SCCJA within 72 hours of hiring an officer according to the South Carolina
- Law Enforcement Training Act SECTION 23-23-10 through 23-23-140.



## Selection and Hiring

SECTION 23-23-40. Certification requirement.

If a department employs a non-certified officer, the person shall not perform any of the duties of a law enforcement officer involving the control or direction of members of the public or exercising the power of arrest until he has successfully completed a firearms qualification program approved by the council; and provided, further, that *within three working days of employment*, the *academy must be notified* by a public law enforcement agency that a person has been employed by that agency as a law enforcement officer, and *within three working days of the notice the firearms qualification program* as approved by the director must be provided to the newly hired personnel. Should any such person fail to secure certification within one year from his date of employment, he may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has been certified. He is not eligible for employment or appointment by any other agency in South Carolina as a law enforcement officer, nor is he eligible for any compensation by any law enforcement agency for services performed as an officer.



## Selection and Hiring

- SECTION 23-23-60 Certificates of compliance; information to be submitted relating to qualification of candidates
- 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;



## Selection and Hiring

- (5) evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to:
  - (a) 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) 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) evidence satisfactory to the director that a local credit check has been made with favorable results;
  - (d) 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. 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) a copy of the candidate's photograph;
- (7) a copy of the candidate's fingerprints;
- (8) 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;



## Selection and Hiring

SECTION 59-111-50. Persons defaulting on certain student loans precluded from employment by State.

- No person who has willfully defaulted on a National Direct Student Loan, a National Defense Student Loan, a Guaranteed-Federally Insured Student Loan, a Nursing Student Loan, a Health Professions Student Loan or a Law Enforcement Educational Loan shall now or hereafter be employed by the State or any of its departments, agencies or subdivisions until all defaults are cured and loan payments made current; provided, however, that if such person and his lender voluntarily enter into an agreement after default under which terms the debt will be repaid and the lender confirms this agreement in writing with the state agency, department or subdivision, the loan shall not be considered in default and the default shall be considered as cured so long as the person complies with the terms of the agreement.



## Employee Performance/Disciplinary Actions

- Documenting performance of officers is essential
- Departments should have personnel policies to address disciplinary actions for policy violations, incidents, accidents, and criminal activity.
- Develop a process for the early identification of employees exhibiting symptoms of stress, negative performance, or behavior that could pose liability to the community, agency, and officer.
- The department should have a clear disciplinary process or proper intervention to address willful or at-fault violations. The system should review at a minimum some, or all of the following: complaints, use of force incidents, shooting incidents, use of sick leave, preventable accidents, domestic misconduct incidents, civil litigation and performance evaluations.



## Employee Performance/Disciplinary

- Departments should have personnel policies in place to address disciplinary actions for policy violations, incidents, accidents, and criminal activity.
- The commission, typically issued by the officer's chief or governing body, grants the law enforcement officer the authority to perform arrests and enforce the laws of the State of South Carolina within a certain jurisdiction.
- The law enforcement certification, issued by the Law Enforcement Training Council through the South Carolina Criminal Justice Academy, grants the law enforcement officer authority to enforce the laws and ordinances of this state or any political subdivisions once the officer is deemed qualified by the Law Enforcement Training Council.



## Employee Performance/Disciplinary

- The certification belongs to the Law Enforcement Training Council, not the officer. The Training Act and corresponding regulations allow the Law Enforcement Training Council to withdraw and/or deny certification to an officer if the officer has committed misconduct as defined in S.C. Reg. 37-025 and/or 37-026.
- Misconduct includes
  - conviction, plea of guilt, plea of no contest or admission of guilt (regardless of adjudication) to a felony, a crime punishable by a sentence of one year or more (regardless of the sentence actually imposed, if any), or a crime of moral turpitude in this or any other jurisdiction.;
  - unlawful use of controlled substance;
  - repeated use of excessive force in dealing with the public and/or prisoners;
  - dangerous and/or unsafe practices involving firearms, weapons, and/or vehicles which indicate a willful or wanton disregard for the safety of persons or property;
  - physical or psychological abuses of members of the public and/or prisoners;
  - misrepresentation of employment-related information; and
  - dishonesty with respect to his/her employer, untruthfulness with respect to his/her employer.



## Liability

### Negligent hiring

Should have known the new hire was a liability  
Would have known if the proper background was conducted

### Negligent retention

Overlook serious personnel problems with an employee  
resulting in potential for legal action. (Difficult to defend)

### Failure to supervise

Dereliction of duty on all supervisors in the employees  
chain of command. (Simple to prove in depositions)

### Failure to train

The training records say it all...if little or none, you've  
got a problem. (FOIA!)

**THE ONLY THING WORSE  
THAN TRAINING EMPLOYEES  
AND LOSING THEM  
IS TO NOT TRAIN THEM  
AND KEEP THEM.**

**-ZIG ZIGLAR**

**FB/ZIGZIGLAR**



Risk Management Services



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**MASC** Municipal Association  
of South Carolina™