

House File 2647 - Introduced

HOUSE FILE 2647

BY WINDSCHITL and PRICHARD

A BILL FOR

1 An Act relating to peace officers, including the certification,
2 training, and prosecution of peace officers and the use of
3 chokeholds by peace officers, and including effective date
4 and retroactive applicability provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

PROSECUTION BY ATTORNEY GENERAL

Section 1. NEW SECTION. 13.12 Prosecution of criminal offenses committed by law enforcement officers.

The attorney general may prosecute a criminal offense committed by a law enforcement officer, as defined in section 80B.3, arising from the actions of the officer resulting in the death of another, regardless of whether the county attorney requests the assistance of the attorney general or decides to independently prosecute the criminal offense committed by the officer. If the attorney general determines that criminal charges are not appropriate, the attorney general may refer the matter to the Iowa law enforcement academy council to recommend revocation or suspension of the officer's certification if the attorney general determines that the officer committed misconduct that would be grounds for revocation or suspension of a certification under chapter 80B or 80D, or rules adopted pursuant to those chapters.

DIVISION II

USE OF CHOKEHOLDS BY PEACE OFFICERS

Sec. 2. Section 804.8, Code 2020, is amended to read as follows:

804.8 Use of force by peace officer making an arrest.

1. A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force or a chokehold is only justified when a person cannot be captured any other way and either of the following apply:

- a. The person has used or threatened to use deadly force in committing a felony.
- b. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

1 2. A peace officer making an arrest pursuant to an invalid
2 warrant is justified in the use of any force which the peace
3 officer would be justified in using if the warrant were valid,
4 unless the peace officer knows that the warrant is invalid.

5 3. For purposes of this section, "chokehold" means the
6 intentional and prolonged application of force to the throat
7 or windpipe that prevents or hinders breathing or reduces the
8 intake of air.

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DIVISION III

10 CERTIFICATIONS — OTHER STATES — REVOCATION OR SUSPENSION

11 Sec. 3. Section 80B.3, Code 2020, is amended by adding the
12 following new subsection:

13 NEW SUBSECTION. 4. *"Reserve peace officer"* means the same
14 as defined in section 80D.1A.

15 Sec. 4. NEW SECTION. **80B.11F** Previous certification in
16 other states.

17 1. For purposes of this section, *"serious misconduct"* means
18 improper or illegal actions taken by a law enforcement officer
19 in connection with the officer's official duties including
20 but not limited to a conviction for a felony, fabrication of
21 evidence, repeated use of excessive force, acceptance of a
22 bribe, or the commission of fraud.

23 2. The council may adopt rules pursuant to chapter 17A to
24 establish a process for the certification through examination
25 of law enforcement officers who have been certified in another
26 state.

27 3. Before beginning employment with an employing agency in
28 this state, a law enforcement officer who has been certified
29 in another state must submit a preliminary application
30 for certification through examination to the council. The
31 application shall be under oath and shall require the applicant
32 to provide any information determined to be necessary by the
33 council, including but not limited to an attestation by the
34 applicant to any of the following:

35 a. Whether the applicant's certification as a law

1 enforcement officer has been revoked or suspended in another
2 state.

3 *b.* Whether the applicant has pled guilty to or been
4 convicted of a felony.

5 *c.* Whether the applicant has been discharged for serious
6 misconduct from employment as a law enforcement officer.

7 *d.* Whether the applicant left, voluntarily quit, or has been
8 laid off when the applicant knew or believed that disciplinary
9 investigation or action was imminent or pending which could
10 have resulted in the applicant being discharged for serious
11 misconduct.

12 4. The council shall deny a preliminary application upon a
13 finding that the applicant has done any of the following:

14 *a.* Been revoked as a certified law enforcement officer in
15 another state.

16 *b.* Pled guilty to or been convicted of a felony.

17 *c.* Been discharged for serious misconduct from employment
18 as a law enforcement officer.

19 *d.* Left, voluntarily quit, or been laid off when
20 disciplinary investigation or action was imminent or pending
21 which could have resulted in the applicant being discharged
22 for serious misconduct, if the council determines that the
23 applicant engaged in serious misconduct.

24 5. If the council denies a preliminary application for
25 certification through examination, the applicant shall be
26 prohibited from continued employment as a law enforcement
27 officer in this state.

28 Sec. 5. Section 80B.13, subsections 8 and 9, Code 2020, are
29 amended to read as follows:

30 8. ~~*a.* Revoke or suspend a law enforcement officer's or~~
31 ~~reserve peace officer's certification for the conviction of~~
32 ~~a felony or revoke or suspend a law enforcement officer's~~
33 ~~certification for a violation of rules adopted pursuant to~~
34 ~~section 80B.11, subsection 1, paragraph "h" pursuant to section~~
35 80B.13A. In addition the council may consider revocation or

~~1 suspension proceedings when an employing agency recommends to
2 the council that revocation or suspension would be appropriate
3 with regard to a current or former employee. If a law
4 enforcement officer resigns, the employing agency shall notify
5 the council that an officer has resigned and state the reason
6 for the resignation if a substantial likelihood exists that
7 the reason would result in the revocation or suspension of an
8 officer's certification for a violation of the rules.~~

~~9 b. A recommendation by an employing agency must be in
10 writing and set forth the reasons why the action is being
11 recommended, the findings of the employing agency concerning
12 the matter, the action taken by the employing agency, and that
13 the action by the agency is final. "Final", as used in this
14 section, means that all appeals through a grievance procedure
15 available to the officer or civil service have been exhausted.
16 The written recommendations shall be unavailable for inspection
17 by anyone except personnel of the employing agency, the council
18 and the affected law enforcement officer, or as ordered by a
19 reviewing court.~~

~~20 c. The council shall establish a process for the protest
21 and appeal of a revocation or suspension made pursuant to this
22 subsection.~~

23 9. In accordance with [chapter 17A](#), conduct investigations,
24 hold hearings, appoint hearing examiners administrative law
25 judges, administer oaths, and issue subpoenas enforceable
26 in district court on matters relating to the revocation or
27 suspension of a law enforcement officer's certification.

28 Sec. 6. NEW SECTION. 80B.13A Revocation or suspension of
29 certification.

30 1. For purposes of this section:

31 a. "Final" means that all appeals through a grievance
32 procedure available to the officer or civil service have been
33 exhausted.

34 b. "Serious misconduct" means improper or illegal actions
35 taken by a law enforcement officer or reserve peace officer in

1 connection with the officer's official duties including but not
2 limited to a conviction for a felony, fabrication of evidence,
3 repeated use of excessive force, acceptance of a bribe, or the
4 commission of fraud.

5 2. The council shall revoke the certification of a law
6 enforcement officer or reserve peace officer upon a finding
7 that the law enforcement officer or reserve peace officer has
8 done any of the following:

9 a. Pled guilty to or been convicted of a felony.

10 b. Been discharged for serious misconduct from employment
11 as a law enforcement officer or from appointment as a reserve
12 peace officer, as applicable.

13 c. Left, voluntarily quit, or been laid off when
14 disciplinary investigation or action was imminent or pending
15 which could have resulted in the law enforcement officer being
16 discharged or the reserve peace officer being removed for
17 serious misconduct, if the council determines that the officer
18 engaged in serious misconduct.

19 3. The council may revoke or suspend the certification of a
20 law enforcement officer or reserve peace officer due to any of
21 the following:

22 a. For any other grounds authorized by rules adopted
23 pursuant to section 80B.11, subsection 1, paragraph "h", or
24 section 80D.4A.

25 b. When an employing agency recommends to the council that
26 revocation or suspension would be appropriate with regard to a
27 current or former employee. A recommendation by an employing
28 agency must be in writing and set forth the reasons why the
29 action is being recommended, the findings of the employing
30 agency concerning the matter, the action taken by the employing
31 agency, and that the action by the agency is final.

32 c. When the attorney general recommends to the council
33 that revocation or suspension would be appropriate pursuant to
34 section 13.12.

35 4. An employing agency shall notify the council within ten

1 days of any termination of employment of a law enforcement
2 officer or appointment as a reserve peace officer. The
3 notification must state whether the law enforcement officer or
4 reserve peace officer was discharged or removed for serious
5 misconduct or whether the officer left, voluntarily quit, or
6 was laid off when disciplinary investigation or action was
7 imminent or pending which could have resulted in the officer
8 being discharged or removed for serious misconduct. Upon
9 request by the council, the employing agency shall provide
10 any additional information or documentation about the officer
11 including confidential records or information under section
12 22.7 or other applicable law to the council.

13 5. Any recommendation, notification, or other record or
14 information provided by an employing agency or the attorney
15 general pursuant to this section shall be confidential except
16 as required by rule or order of the council, an administrative
17 law judge, or a reviewing court. Any employing agency or
18 person who, acting reasonably and in good faith, files a
19 notification or recommendation, releases information, or
20 otherwise cooperates with an investigation under this section
21 is immune from any liability, civil or criminal, which might
22 otherwise be incurred or imposed for such action.

23 6. The council shall adopt rules pursuant to chapter 17A
24 establishing a process to challenge and appeal a revocation or
25 suspension made pursuant to this section.

26 Sec. 7. Section 80D.4A, Code 2020, is amended to read as
27 follows:

28 **80D.4A Training and certification requirements — revocation**
29 **or suspension of certification.**

30 The director of the academy, subject to the approval
31 of the council, shall promulgate rules in accordance with
32 the provisions of **this chapter** and **chapter 17A**, giving due
33 consideration to varying factors and special requirements of
34 law enforcement agencies relative to the standardized training
35 and state certification of reserve peace officers. The rules

1 shall provide for grounds for revocation or suspension of a
2 reserve peace officer's certification.

3 DIVISION IV

4 LAW ENFORCEMENT TRAINING — DE-ESCALATION TECHNIQUES AND
5 PREVENTION OF BIAS

6 Sec. 8. NEW SECTION. 80B.11G Annual training —
7 **de-escalation techniques and prevention of bias.**

8 1. A law enforcement agency shall provide annual training
9 to every law enforcement officer on issues relating to
10 de-escalation techniques and the prevention of bias. Every law
11 enforcement officer in the state must participate in annual
12 training in accordance with this section.

13 2. The academy shall develop and disseminate training
14 guidelines for all law enforcement officers consistent with
15 best practice guidelines.

16 3. Every law enforcement officer shall adhere to the
17 training guidelines developed by the academy pursuant to this
18 section. The training guidelines shall include all of the
19 following:

20 a. An emphasis on law enforcement officer understanding
21 and respect for diverse communities and the importance of
22 effective, noncombative methods of carrying out law enforcement
23 activities in a diverse community.

24 b. Instruction on diverse communities in order to foster
25 mutual respect and cooperation between law enforcement and
26 members of all diverse communities.

27 c. An examination of the patterns, practices, and protocols
28 that cause biased law enforcement actions, and the tools to
29 prevent such actions.

30 d. An examination and identification of key indices and
31 perspectives that make up differences among residents in a
32 local community.

33 e. Instruction on implicit bias and consideration of the
34 negative impact of bias, whether intentional or implicit,
35 on effective law enforcement, including examination of how

1 historical perceptions of profiling have harmed community
2 relations.

3 *f.* Instruction on the perspectives of diverse local
4 constituency groups from experts on particular cultural and law
5 enforcement-community relations issues in a local area.

6 *g.* A presentation of the history and the role of the civil
7 rights movement and the impact on law enforcement.

8 *h.* Instruction on de-escalation techniques, including verbal
9 and physical tactics to minimize the need for the use of force
10 and nonlethal methods of applying force.

11 4. In developing the training guidelines, the academy shall
12 consult with the Iowa civil rights commission, groups and
13 individuals having an interest and expertise in the field of
14 cultural awareness and diversity, and advocacy organizations
15 with an interest and expertise in the field of biased law
16 enforcement actions. The academy shall also consult with local
17 law enforcement agencies to consider challenges and barriers to
18 providing training under the guidelines and methods to ease the
19 burden on such agencies.

20 Sec. 9. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3,
21 shall not apply to this division of this Act.

22 DIVISION V

23 EFFECTIVE DATE AND APPLICABILITY

24 Sec. 10. EFFECTIVE UPON ENACTMENT. Unless otherwise
25 provided, this Act, if approved by the governor on or after
26 July 1, 2020, takes effect upon enactment.

27 Sec. 11. RETROACTIVE APPLICABILITY. Unless otherwise
28 provided, this Act, if approved by the governor on or after
29 July 1, 2020, applies retroactively to July 1, 2020.

30 EXPLANATION

31 The inclusion of this explanation does not constitute agreement with
32 the explanation's substance by the members of the general assembly.

33 This bill relates to peace officers, including the
34 certification, training, and prosecution of peace officers and
35 the use of chokeholds by peace officers.

1 PROSECUTION BY ATTORNEY GENERAL. The bill authorizes the
2 attorney general to prosecute a criminal offense committed by a
3 law enforcement officer arising from the actions of the officer
4 resulting in the death of another, regardless of whether the
5 county attorney requests the assistance of the attorney general
6 or decides to independently prosecute the criminal offense
7 committed by the officer. If the attorney general determines
8 that criminal charges are not appropriate, the bill authorizes
9 the attorney general to refer the matter to the Iowa law
10 enforcement academy council (council) to recommend revocation
11 or suspension of the officer's certification.

12 USE OF CHOKEHOLDS BY PEACE OFFICERS. The bill provides
13 that the use of a chokehold, as defined in the bill, by a
14 peace officer while making an arrest is only justified when
15 the person being arrested has used or threatened to use
16 deadly force in committing a felony, or when the peace officer
17 reasonably believes the person would use deadly force against
18 any person unless immediately apprehended. These are the same
19 circumstances under which the use of deadly force by a peace
20 officer during an arrest is justified under current law.

21 CERTIFICATIONS — OTHER STATES — REVOCATION OR SUSPENSION.
22 The bill allows the council to appoint administrative law
23 judges. The bill sets forth the circumstances under which the
24 council is required to revoke a law enforcement officer's or
25 reserve peace officer's certification, and the circumstances
26 under which the council is authorized to revoke or suspend
27 an officer's certification. The bill requires an employing
28 agency to notify the council within 10 days of any termination
29 of employment of a law enforcement officer or appointment as a
30 reserve peace officer.

31 The bill allows the council to adopt rules to establish
32 a process for the certification through examination of law
33 enforcement officers who have been certified in another state.
34 The bill requires that before beginning employment with an
35 employing agency in this state, a law enforcement officer who

1 has been certified in another state must submit, under oath, a
2 preliminary application for certification through examination
3 to the council which shall include but not be limited to an
4 attestation by the applicant to whether the applicant has
5 had the officer's certification as a law enforcement officer
6 revoked or suspended in another state; has pled guilty to or
7 been convicted of a felony; has been discharged for serious
8 misconduct from employment as a law enforcement officer;
9 or has left, voluntarily quit, or been laid off when the
10 applicant knew or believed that disciplinary investigation
11 or action was imminent or pending which could have resulted
12 in the law enforcement officer being discharged for serious
13 misconduct. If the council denies the preliminary application
14 for certification through examination, the applicant shall
15 be prohibited from continued employment as a law enforcement
16 officer in this state.

17 LAW ENFORCEMENT TRAINING — DE-ESCALATION TECHNIQUES AND
18 PREVENTION OF BIAS. The bill requires a law enforcement agency
19 to provide annual training to every law enforcement officer
20 employed by the law enforcement agency on issues relating to
21 de-escalation techniques and the prevention of bias. The
22 bill requires the Iowa law enforcement academy to develop and
23 disseminate training guidelines meeting certain requirements
24 set forth in the bill, in consultation with certain parties
25 including the Iowa civil rights commission.

26 The bill may include a state mandate as defined in Code
27 section 25B.3. The bill makes inapplicable Code section 25B.2,
28 subsection 3, which would relieve a political subdivision from
29 complying with a state mandate if funding for the cost of
30 the state mandate is not provided or specified. Therefore,
31 political subdivisions are required to comply with any state
32 mandate included in the bill.

33 EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. Unless
34 otherwise provided, the bill, if approved by the governor on
35 or after July 1, 2020, takes effect upon enactment and applies

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1 retroactively to July 1, 2020.