



ALAN WILSON  
ATTORNEY GENERAL

April 10, 2025

The Honorable Jonathan D. Anders  
Chief Magistrate, Greenville County  
445 E. Curtis, St.  
Simpsonville, SC 29681

Dear Judge Anders:

We received your letter requesting an opinion concerning the applicability of South Carolina Code Section 23-23-10 *et seq.* to magistrates and their constables. You specifically reference Section 23-23-85, which requires the South Carolina Law Enforcement Training Counsel (the LETC) to establish minimum standards for all law enforcement agencies and permits the LETC to take punitive action against any law enforcement agency that refuses to comply with the standards. You note that the magistrates' constables in Greenville County "execute writs, serve legal documents, and perform other duties at the direction of the magistrate." Although three of the constables currently hold a Class 1-LE certification, you note they "do not function as law enforcement officers." By phone and email, you advised that staff of the South Carolina Criminal Justice Academy (the CJA) has asserted the Constable Division of the Greenville County Magistrates must adopt the policies required by South Carolina Code Section 23-23-85, and must provide proof that each policy is being followed. Given that magistrates' constables do not have the authority of law enforcement officers, you ask whether the requirements for law enforcement agencies in Chapter 23 of Title 23 apply to magistrates and the constables they appoint.

### Law/Analysis

Title 23 of the South Carolina Code is entitled "Law Enforcement and Public Safety." Chapter 23 of Title 23 creates the Criminal Justice Academy (the CJA) as the facility for training law enforcement officers and the Law Enforcement Training Council (the LETC) as its governing body. S.C. Code Ann. § 23-23-20 (Rev. 2025) (creating the CJA); S.C. Code Ann. § 23-23-30 (Rev. 2025) (creating the LETC). The purpose and definition section of Chapter 23 provides in part:

(A) In order to ensure the public safety and general welfare of the people of this State, and to promote equity for all segments of society, a program of training for

law enforcement officers and other persons employed in the criminal justice system in this State is hereby proclaimed and this chapter must be interpreted to achieve these purposes principally through the establishment of minimum and advance standards in law enforcement selection and training.

(B) It is the intent of this chapter to encourage all law enforcement officers, departments, and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this chapter, and these minimum standards may not be considered sufficient or adequate in cases where higher standards have been adopted or proposed. Nothing in this chapter may be construed to preclude an employing agency from establishing qualifications and standards for hiring or training law enforcement officers which exceed the minimum standards set by the Law Enforcement Training Council, hereinafter created, nor, unless specifically stated, may anything in this chapter be construed to affect any sheriff, or other law enforcement officer elected under the provisions of the Constitution of this State.

(C) It is the intent of the General Assembly in creating a facility and a governing council to maximize training opportunities for law enforcement officers and criminal justice personnel, to coordinate training, and to set standards for the law enforcement and criminal justice service, all of which are imperative to upgrading law enforcement to professional status.

S.C. Code Ann. § 23-23-10 (Rev. 2025).

Beginning in January 2023, the LETC was tasked with establishing minimum standards for all law enforcements agencies, including policies for:

(1) the use of force and response to resistance by law enforcement officers. The policy must establish standards limiting officers to force that is objectively reasonable based on the totality of the circumstances involved. The policy must prohibit the use of chokeholds and carotid restraints as less lethal force options;

(2) uniform vehicle pursuit standards and the use of lethal options during pursuit;

(3) an officer's duty to intervene in the actions of other observed officers;

(4) hiring and terminating practices;

(5) mandatory and uniform post basic academy field training;

(6) uniform implementation and the use of body-worn cameras;

(7) the use of “no knock” warrants;

(8) the establishment, implementation, or continuation of systems and processes for filing and investigating complaints, including anonymous complaints, against the law enforcement agency or an employee of the law enforcement agency. The council shall require law enforcement agencies to have a written directive, which must be made available to the public, that delineates how complaints can be made, the investigative process of such complaints, and a maximum timeframe for the resolution of the complaint. All substantiated complaints must be reported to the council through standardized forms as promulgated by the council; and

(9) the establishment, implementation, or continuation of an early warning system that identifies, assesses, reviews, and tracks at-risk behavior of employees and requires intervention where appropriate.

S.C. Code Ann. § 23-23-85(A) (Rev. 2025). The LETC has the authority “to take punitive action against any law enforcement agency that refuses to comply” with these standards. S.C. Code Ann. § 23-23-85(C). To ensure compliance with the standards, a compliance division under the LETC’s jurisdiction was established and charged with inspecting all law enforcement agencies’ policies and procedures at least every three years. S.C. Code Ann. § 23-23-160(A) and (B) (Rev. 2025). Law enforcement agencies providing satisfactory proof that they are currently accredited by the South Carolina Law Enforcement Accreditation Council or the Commission on Accreditation for Law Enforcement Agencies are exempt from the inspections. S.C. Code Ann. § 23-23-160(D). A law enforcement agency is defined for purposes of compliance as “any agency or entity of the State or any of its political subdivisions that employs or appoints law enforcement officers.” S.C. Code Ann. § 23-23-160(B) (Rev. 2025). For the purposes of Title 23, Chapter 23, law enforcement officer means:

an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

S.C. Code Ann. § 23-23-10(E)(1) (Rev. 2025).

Each magistrate is authorized by statute to appoint a constable. S.C. Code Ann. § 22-9-10 (Rev. 2025). Once appointed, the constable holds the office for a period of two years, subject to removal by the appointing magistrate. *Id.* The statutory duties of a magistrate’s constable include:

- Executing legal orders of the county’s governing body pursuant to S.C. Code Ann. § 22-9-60 (Rev. 2025);

- Attending circuit court if required by the sheriff and serving as an officer of the court pursuant to S.C. Code Ann. § 22-9-70 (Rev. 2025);
- Executing process and making a return as well as executing every lawful order issued by the constable's magistrate or court as required by S.C. Code Ann. § 22-9-80 (Rev. 2025); and
- Levying an execution or serving an attachment on personal property as permitted by S.C. Code Ann. § 22-9-100 and -110 (Rev. 2025).

A magistrate's constable is not a law enforcement officer and does not have the authority of a law enforcement officer. Op. S.C. Att'y Gen., 1984 WL 159894 at \*1 (July 26, 1984) (concluding that a magistrate's constable lacks general authority as a peace officer and "does not have the power to arrest without a warrant for a misdemeanor committed in his presence"). Instead, magistrates' constables are "officers of the courts of magistrate, appointed by the magistrate and with the duty of executing his lawful orders." Op. S.C. Att'y Gen., 1973 WL 21019 at \* 1 (July 3, 1973). A magistrate's constable is not given statutory authority to enforce criminal, traffic, or penal laws as would be necessary for them to be considered law enforcement officers within the meaning of Title 23, Chapter 23 of the South Carolina Code. Thus, employing a magistrate's constable does not cause the magistrate's office to fall within the definition of a law enforcement agency subject to the minimum standards outlined in Section 23-23-85 and enforced pursuant to Section 23-23-160.

Despite this, the minimum standards compliance staff of the CJA seeks to treat your office as a law enforcement agency. We suspect that is because three of the constables employed by your court currently hold Class 1-LE certifications and those certifications have been linked to your office with the CJA.

The LETC is authorized to issue certificates and other documentation to a law enforcement agency showing that a law enforcement officer is qualified and compliant with their training requirements. S.C. Code Ann. § 23-23-60(A). When a law enforcement agency hires someone to work as a law enforcement officer, the agency has three days to notify the academy of the person's employment. S.C. Code Ann. § 23-23-40(A). This is done by completing a Personnel Change in Status (PCS) form online reflecting the new hire.<sup>1</sup> The process of certification that follows differs depending on whether the person has previously been certified or is a candidate for certification. An officer candidate becomes certified upon completion of the appropriate training program at the CJA. S.C. Code Ann. Regs. § 37-004 (Supp. 2024). Once certified, a law enforcement officer must engage in continuing education to maintain their certification. S.C. Code Ann. § 23-23-60(C)(1) and (3) (providing that law enforcement certification expires three years after it is issued, but may be renewed prior to the expiration); S.C. Code Ann. § 23-23-50 (Rev. 2025) (providing requirements for continuing education including specific requirements for education on domestic violence during each three-year recertification period); S.C. Code Ann. § 23-23-55 (Rev. 2025) (providing requirements for continuing education in mental health or addictive disorders during

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<sup>1</sup> The CJA's forms are currently located at <https://sccja.sc.gov/forms/>.

the three-year recertification period). The officer's continued certification is also dependent on their continuous employment as a law enforcement officer. When an officer separates from a law enforcement agency, the agency must notify the academy of the separation within fifteen days. S.C. Code Ann. Regs. § 37-022(A) (Supp. 2024). This notice is accomplished by the agency's completion of a PCS form advising of the separation and indicating whether it was routine or due to misconduct. Irrespective of the reason, a separation causes the officer's certification to expire or lapse. S.C. Code Ann. § 23-23-60(C)(1) (certificate expires on discontinuation of employment); S.C. Code Ann. Regs. § 37-006(D) (certification lapses on termination of active law enforcement duty). If the officer is later employed by another law enforcement agency, then the officer may be re-certified. The requirements to re-certify an officer depend on the length of the break in service. S.C. Code Ann. Regs. § 37-006(D)(2), (3), and (6). When a previously certified officer returns to a law enforcement officer role after a break in service of three years or more, the process of certification must begin anew. S.C. Code Ann. Regs. § 37-006(D)(4). This statutory and regulatory framework is designed so that a person can only hold a law enforcement certification while employed as a law enforcement officer.

If the Greenville County magistrates' constables who hold Class 1-LE certifications are not currently employed as law enforcement officers by another law enforcement agency, then it is likely that someone acting on behalf of the Greenville County Summary Court notified the academy of the constables' employment, which caused them to be re-certified even though they are not actually performing law enforcement duties. If that is the case, you may be able to resolve the issue by alerting the academy that your office does not employ any of your constables as Class 1-LE officers. This will cause their certifications to expire or lapse. If any of the constables in question are currently law enforcement officers with another agency, it will be necessary to make certain the CJA is aware of the correct agency to associate with their Class 1-LE certifications and to ensure their ACADIS profiles are corrected.

### **Conclusion**

Magistrate's constables do not have the authority of law enforcement officers. Because of this, the minimum standards for law enforcement agencies established pursuant to Section 23-23-85 do not apply to magistrates and the constables they employ. However, to prevent the CJA from continuing to treat your office as a law enforcement agency subject to those minimum standards, it would be wise for you to investigate how these constables continue to hold their Class 1-LE certifications and to make the CJA aware the constables should not hold Class 1-LE certifications as a result of their employment with your office.

The Honorable Jonathan D. Anders  
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Sincerely,



Sabrina C. Todd  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General