**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3248**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Moore, Bernstein, Rose, S. Williams, Henderson‑Myers, McCoy, Pendarvis, Cogswell, Stavrinakis and Sottile

Document Path: l:\council\bills\bh\7074ahb19.docx

Companion/Similar bill(s): 154, 341, 640, 4212

Introduced in the House on January 8, 2019

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

Summary: Background check for gun transfers

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/18/2018 House Prefiled

12/18/2018 House Referred to Committee on **Judiciary**

1/8/2019 House Introduced and read first time ([House Journal‑page 141](file:///h:\hj\20190108.docx))

1/8/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 143](file:///h:\hj\20190108.docx))

1/31/2019 House Member(s) request name added as sponsor: Henderson‑Myers

2/6/2019 House Member(s) request name added as sponsor: McCoy

2/12/2019 House Member(s) request name added as sponsor: Pendarvis

2/28/2019 House Member(s) request name added as sponsor: Cogswell, Stavrinakis, Sottile

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**VERSIONS OF THIS BILL**

[12/18/2018](file:///p:\pprever\2019-20\3248_20181218.docx)

**A** **BILL**

TO AMEND SECTION 14‑17‑325, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REQUIREMENT THAT CLERKS OF COURT REPORT DISPOSITIONS OF CASES IN GENERAL SESSIONS COURT, SO AS TO REQUIRE THAT EVERY CLERK OF COURT SHALL REPORT TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION WITHIN TEN DAYS, WEEKENDS AND HOLIDAYS EXCLUDED, THE DISPOSITION OF EACH CASE IN GENERAL SESSIONS, AND TO REPORT WITHIN FORTY‑EIGHT HOURS THE ISSUANCE OF A RESTRAINING ORDER, ORDER OF PROTECTION, ORDER FOR THE PREVENTION OF POSSESSION OF A FIREARM, CONVICTIONS OR ORDERS RELATED TO DOMESTIC VIOLENCE, ORDERS RELATED TO STALKING, INTIMIDATION, OR HARASSMENT, AND ORDERS FOR BOND WITH ANY LIMITATIONS LISTED IN THIS SECTION; BY ADDING SECTION 22‑1‑200 SO AS TO REQUIRE MAGISTRATES TO REPORT TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION WITHIN TEN DAYS, WEEKENDS AND HOLIDAYS EXCLUDED, THE DISPOSITION OF EACH CRIMINAL CASE, AND TO REPORT WITHIN FORTY‑EIGHT HOURS THE ISSUANCE OF A RESTRAINING ORDER, ORDER OF PROTECTION, ORDER FOR THE PREVENTION OF POSSESSION OF A FIREARM, CONVICTIONS OR ORDERS RELATED TO DOMESTIC VIOLENCE, AND CONVICTIONS OR ORDERS RELATED TO STALKING, INTIMIDATION, OR HARASSMENT, AND ORDERS FOR BOND WITH ANY LIMITATIONS LISTED IN THIS SECTION; BY ADDING SECTION 14‑25‑250 SO AS TO REQUIRE MAGISTRATES TO REPORT TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION WITHIN TEN DAYS, WEEKENDS AND HOLIDAYS EXCLUDED, THE DISPOSITION OF EACH CRIMINAL CASE, AND TO REPORT WITHIN FORTY‑EIGHT HOURS THE ISSUANCE OF A RESTRAINING ORDER, ORDER OF PROTECTION, ORDER FOR THE PREVENTION OF POSSESSION OF A FIREARM, CONVICTIONS OR ORDERS RELATED TO DOMESTIC VIOLENCE, AND CONVICTIONS OR ORDERS RELATED TO STALKING, INTIMIDATION, OR HARASSMENT, AND ORDERS FOR BOND WITH ANY LIMITATIONS LISTED IN THIS SECTION; BY ADDING SECTION 23‑1‑250 SO AS TO REQUIRE EACH LAW ENFORCEMENT AGENCY TO REPORT TO SLED WITHIN TWENTY‑FOUR HOURS, THE FILING OF EACH INCIDENT REPORT, ORDER OF PROTECTION, RESTRAINING ORDER, ANY ORDER OR REPORT RELATING TO AN INCIDENT OF DOMESTIC VIOLENCE, OR ANY INCIDENT IN WHICH A PERSON MAY BE PROHIBITED FROM OBTAINING OR POSSESSING A FIREARM BY STATE OR FEDERAL LAW; BY ADDING CHAPTER 32 TO TITLE 14 SO AS TO CREATE THE JUDICIAL CRIMINAL INFORMATION TECHNOLOGY COMMITTEE, TO ESTABLISH MEMBERSHIP, DUTIES, AND RESPONSIBILITIES OF THE COMMITTEE TO INCLUDE THE STUDY OF, AND TO MAKE RECOMMENDATIONS FOR, THE IMPROVEMENT OF JUDICIAL AND LAW ENFORCEMENT INFORMATION TECHNOLOGY AND REPORTING; BY ADDING ARTICLE 9 TO CHAPTER 23, TITLE 16 SO AS TO DEFINE NECESSARY TERMS, TO REQUIRE THAT NO GUN TRANSFER PRECEDED BY A CRIMINAL BACKGROUND CHECK MAY PROCEED, UNLESS THE CRIMINAL BACKGROUND CHECK HAS CONCLUDED THAT THE SALE MAY PROCEED, OR UNTIL AT LEAST FIVE DAYS HAVE PASSED FROM THE INITIATION OF THE BACKGROUND CHECK AND THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM HAS NOT REPORTED THAT THE SALE WOULD VIOLATE STATE OR FEDERAL LAW, AND TO PROVIDE FOR CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ARTICLE; AND TO PROVIDE FOR THE SUN SETTING OF THE FIVE‑DAY BACKGROUND CHECK PROVISIONS UPON THE FULL IMPLEMENTATION OF THE REPORTING REQUIREMENTS OF THIS ACT BUT NOT LATER THAN TWO YEARS FROM THE EFFECTIVE DATE OF THE ACT.

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

SECTION 1. Section 14‑17‑325 of the 1976 Code is amended to read:

“Section 14‑17‑325. (A) Every clerk of court shall report the disposition of each case in the Court of General Sessions to the ~~State~~ South Carolina Law Enforcement Division (SLED) within ~~thirty~~ ten days of disposition, weekends and holidays excluded.

(B) The clerk of court shall report to SLED, within forty-eight hours, the issuance of any:

(1) restraining orders;

(2) orders of protection;

(3) orders preventing a person from possessing a firearm;

(4) convictions related to or orders issued to prevent acts of domestic violence against another person;

(5) orders issued related to the stalking, intimidation, or harassment of another person; or

(6) orders for bond with any limitations listed in this section.

(C) The ~~disposition report~~ reports required by this section must be in a format approved by representatives of ~~the State Law Enforcement Division~~ SLED and ~~the office of court administration~~ South Carolina Court Administration. With the approval of ~~the State Law Enforcement Division~~ SLED and ~~the office of court administration~~ Court Administration, this reporting requirement may be satisfied by use of General Sessions docket information transmitted to ~~the office of the court administration~~ Court Administration.”

SECTION 2. Chapter 1, Title 22 of the 1976 Code is amended by adding:

“Section 22‑1‑200. (A) Magistrates shall report the disposition of each criminal case to the South Carolina Law Enforcement Division (SLED) within ten days, weekends and holidays excluded.

(B) Magistrates shall report to SLED within forty-eight hours, the issuance of any:

(1) restraining orders;

(2) orders of protection;

(3) orders preventing a person from possessing a firearm;

(4) convictions related to or orders issued to prevent acts of domestic violence against another person;

(5) orders issued or convictions related to, or to prevent, the stalking, intimidation, or harassment of another person; or

(6) orders for bond with any limitations listed in this section.

(C) The report must be made in a format approved by representatives of SLED and Court Administration. With the approval of SLED and South Carolina Court Administration, this reporting requirement may be satisfied by use of docket information transmitted to Court Administration.”

SECTION 3. Article 1, Chapter 25, Title 14 of the 1976 Code is amended by adding:

“Section 14‑25‑250. (A) Each municipal judge shall report the disposition of each criminal case to the South Carolina Law Enforcement Division (SLED) within ten days, weekends and holidays excluded.

(B) A municipal judge shall report to SLED within forty-eight hours, the issuance of any:

(1) restraining orders;

(2) orders of protection;

(3) orders preventing a person from possessing a firearm;

(4) convictions related to or orders issued to prevent acts of domestic violence against another person;

(5) convictions related to or orders issued to prevent, the stalking, intimidation, or harassment of another person; or

(6) orders for bond with any limitations listed in this section.

(C) The report must be made in a format approved by representatives of SLED and Court Administration. With the approval of SLED and South Carolina Court Administration, this reporting requirement may be satisfied by use of docket information transmitted to Court Administration.”

SECTION 4. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23‑1‑250. (A) Each law enforcement agency must report to the South Carolina Law Enforcement Division (SLED) within twenty‑four hours:

(1) the filing of an incident report for each criminal case;

(2) the filing of an order of protection, restraining order, or any order or report relating to an incident of domestic violence;

(3) any incident in which a person may be prohibited from obtaining or possessing a firearm by state or federal law;

(B) The report must be made in a format approved by representatives of SLED.”

SECTION 5. Title 14 of the 1976 Code is amended by adding:

“CHAPTER 32

Judicial Criminal Information Technology Committee

Section 14‑32‑10. There is hereby established a committee to be known as the Judicial Criminal Information Technology Committee, which must exercise the powers and fulfill the duties described in this chapter.

Section 14‑32‑20. (A) The committee shall be composed of the following:

(1) a member of the Senate, appointed by the Chair of the Senate Judiciary Committee;

(2) a member of the House of Representatives, appointed by the Chair of the House Judiciary Committee;

(3) the Chief Justice of the Supreme Court, who shall serve ex officio;

(4) one member who is a judge of the State, appointed by the Chief Justice of the Supreme Court;

(5) one member who is a clerk of court appointed by the Chief Justice of the Supreme Court;

(6) one member who is a circuit solicitor, appointed by the Attorney General;

(7) one member who is a circuit public defender, appointed by the Chief Justice of the Supreme Court; and

(8) one member who is a sheriff or municipal chief of police, appointed by the Governor;

(B) The members who are appointed shall serve for period of three years and may be reappointed.

(C) The committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chair and such other officers as the oversight committee may consider necessary. Thereafter, the oversight committee must meet at least annually and at the call of the chair or by a majority of the members. A quorum consists of five members.

Section 14‑32‑30. The committee has the following powers and duties:

(1) to review the current state of law enforcement information technology and reporting including, but not limited to, the timeframe and accuracy of the filing of reports, fingerprints and related offender information, and evidence discovery to prosecutors, courts, and to the South Carolina Law Enforcement Division criminal information database;

(2) to review the current state of judicial information technology including, but not limited to, the technology and funding needs of state and local court systems, the technology and funding needs of state and local law enforcement agencies, and the current efficiency, timeliness, and accuracy of filings;

(3) to recommend the implementation of an accurate and secure centralized court reporting system for all courts in the State and to explore funding options, and recommend legislation, rules, or regulations to enhance the overall efficiency of the judicial system and criminal reporting by law enforcement. An initial report must be given to the Chairmen of the House and Senate Judiciary Committees by December 15, 2017, detailing the current status of agency needs, funding requirements, and recommendations and findings of the committee;

(4) to recommend to the Supreme Court, changes to the court rules to effectuate the adoption of a centralized court reporting system and the implementation with, and the full compliance of, reporting deadlines.

Section 14‑32‑40. (A) The committee members are entitled to such mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which appointed. These expenses must be paid from the general fund of the State on warrants duly signed by the chair of the oversight committee and payable by the authorities from which a member is appointed.

(B) The committee is encouraged to apply for and may expend grants, gifts, or federal funds it receives from other sources to carry out its duties and responsibilities.

Section 14‑32‑50. (A) The committee may employ or retain other professional staff, upon the determination of the necessity for other staff by the committee.

(B) The committee may employ consultants to assist in the evaluations and, when necessary, the implementation of the recommendations report.”

SECTION 6. Chapter 23, Title 16 of the 1976 Code is amended by adding:

“Article 9

Background Checks for Firearm Sales and Transfers

Section 16‑23‑910. As used in this article:

(1) ‘Firearm’ means a weapon, including a starter gun, that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of such weapon, a firearm muffler or firearm silencer, or a destructive device. The term does not include an antique firearm.

(2) ‘Licensed dealer’ means the holder of any federal firearms license under 18 U.S.C. Section 923(a).

(3) ‘Transfer’ means to sell, furnish, give, lend, deliver, or otherwise provide, with or without consideration.

(4) ‘Transferee’ means a person who receives or intends to receive a firearm in a sale or transfer.

Section 16‑23‑920. For any sale or transfer of a firearm for which a licensed dealer contacts the National Instant Criminal Background Check System (NICS) to conduct a background check, a licensed gun dealer may not deliver a firearm to any transferee unless the NICS provides the licensed dealer with a unique identification number or five days have elapsed from the date the licensed dealer contacted the NICS and the NICS has not notified the licensed dealer that a sale or transfer to such person would violate state or federal law.

Section 16‑23‑930. A person who violates the provisions of this article is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than one thousand dollars, or both.”

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 8. This act takes effect upon approval by the Governor. The provisions of SECTION 6 are repealed upon the submission of a report by the Judicial Criminal Information Technology Committee to the General Assembly detailing recommendations for the implementation of a centralized court reporting system for all courts of the State and funds for its implementation are appropriated by the General Assembly in the annual appropriations act; however, notwithstanding when the report is submitted, SECTION 6 is repealed two years from the effective date of this act.

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