

House Bill 941

By: Representatives Golick of the 40th, Atwood of the 179th, Pak of the 108th, and Abrams of the 89th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 15, Chapter 7 of Title 17, and Chapter 11 of Title 45 of the
2 Official Code of Georgia Annotated, relating to juries, pretrial proceedings, and
3 miscellaneous offenses concerning public officers and employees, respectively, so as to
4 provide for procedure for review of incidents involving a peace officer's use of deadly force
5 that results in death or serious bodily injury; to provide for definitions; to provide for
6 procedure and disclosure of information from such review; to repeal provisions relating to
7 the use of stenographers and enact provisions relating to court reporters in grand jury
8 proceedings; to change provisions relating to the use of special purpose grand juries; to
9 repeal population Act features connected to grand juries; to provide for peace officer
10 notification of grand jury proceedings and the process of testifying before a grand jury; to
11 change provisions relating to the indictment of public officials for professional misconduct;
12 to provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 Chapter 12 of Title 15 of the Official Code of Georgia Annotated, relating to juries, is
16 amended in Code Section 15-12-71, relating to the duties of the grand jury, by adding a new
17 paragraph to subsection (b) and two new subsections to read as follows:

18 "(5)(A) As used in this paragraph, the term 'serious bodily injury' means bodily harm
19 which deprives a person of a member of his or her body, which renders a member of
20 such person's body useless, or which seriously disfigures such person's body or a
21 member thereof.

22 (B) The grand jury, whenever deemed necessary by 12 or more of its members, or at
23 the request of the district attorney, shall conduct a review of any incident in which a
24 peace officer's use of deadly force resulted in death or serious bodily injury to another.
25 Except when requested by the district attorney, such review shall only be conducted
26 after the investigative report of the incident has been completed and submitted to the

27 district attorney. The district attorney shall begin assisting the grand jury in its review
28 no later than one year from the date of the incident or the date a different prosecuting
29 attorney is appointed by the Attorney General under Code Section 15-18-5 or 15-18-65,
30 whichever is later. A review shall not be conducted pursuant to this paragraph in any
31 case in which the district attorney informs the grand jury that a bill of indictment or
32 special presentment will be presented to a grand jury charging such peace officer with
33 a criminal offense in conjunction with, or arising out of, the incident in which such
34 peace officer's use of deadly force resulted in death or serious bodily injury to another.
35 (C) Not less than 20 days prior to the date upon which the grand jury shall begin
36 hearing evidence in such review, the chief executive officer of the law enforcement
37 agency and the peace officer shall be notified of such date and the time and place of the
38 grand jury meeting, provided that nothing in this paragraph shall require either officer
39 to make a presentation to the grand jury unless requested by the grand jury to do so.
40 (D) When the grand jury is conducting a review pursuant to this paragraph, the
41 testimony of any witness appearing before it and any argument or legal advice provided
42 to the grand jury by the prosecuting attorney shall be recorded by a court reporter. The
43 cost of conducting such review, including, but not limited to, the cost of any recordation
44 and transcription of testimony, shall be paid out of the county treasury, upon the
45 certificate of the judge of the superior court, as other court expenses are paid.
46 (E) Prior to the introduction of any evidence or the first witness being sworn, the
47 district attorney shall advise the grand jury of the laws applicable to the conduct of such
48 review. In particular, the grand jury shall be advised of Code Sections 16-3-20,
49 16-3-21, 16-3-23.1, and 17-4-20."
50 "(e)(1) If the grand jury conducts a review pursuant to paragraph (5) of subsection (b) of
51 this Code section, and the grand jury does not request that the district attorney create a
52 bill of indictment or special presentment, the grand jury shall prepare a report or issue a
53 general presentment based upon its inspection, and any such report or presentment shall
54 be subject to publication as provided for in Code Section 15-12-80.
55 (2) Such report or general presentment shall include a summary of the evidence
56 considered by the grand jury and the grand jury's findings of the facts regarding the
57 incident.
58 (3) Such report or general presentment shall be returned to the court by the grand jury
59 and published in open court, and the report or general presentment shall be filed with the
60 clerk.
61 (4) If the grand jury does not request that the district attorney create a bill of indictment
62 or special presentment, the district attorney shall, upon the release of such report or
63 general presentment and unless otherwise ordered by the court, make available for

64 inspection or copying any evidence considered by the grand jury during such review and
 65 the transcripts of the testimony of the witnesses who testified during the review no later
 66 than the end of the following term of court or six months, whichever is later. On motion
 67 of the district attorney, the court shall order the redaction of any part of the evidence or
 68 transcripts which contains matters subject to a statutory privilege, the names of the grand
 69 jurors, or information contained therein that may be exempt from disclosure pursuant to
 70 Code Section 50-18-72.

71 (5) Any person requesting copies of such report, copies of any evidence considered by
 72 the grand jury during such review, or the transcripts of the testimony of the witnesses
 73 who testified during the review may be charged a reasonable fee for the cost of the
 74 redaction, reproduction, copying, and delivery of such report, evidence, or transcripts as
 75 provided in Code Section 50-18-71. Such costs shall be paid before such material is
 76 provided.

77 (f) If the grand jury requests that the district attorney create a bill of indictment or special
 78 presentment against the peace officer, the transcript of the testimony of the witnesses who
 79 testified during the review, together with any other evidence presented to the grand jury,
 80 shall be not be disclosed, except as provided in Code Section 15-12-72 and in compliance
 81 with Article 1 of Chapter 16 of Title 17. If the bill of indictment or special presentment is
 82 to be presented to another grand jury, the district attorney shall transfer such transcripts and
 83 evidence to the grand jury considering the bill of indictment or special presentment."

84 **SECTION 2.**

85 Said chapter is further amended by revising Code Section 15-12-73, relating to exclusion of
 86 admissions and communications among grand jurors, as follows:

87 "15-12-73.

88 (a) Admissions and communications among grand jurors ~~are~~ shall be excluded as evidence
 89 on grounds of public policy.

90 (b) A grand juror, prosecuting attorney, court reporter, interpreter, or any other person
 91 appearing before a grand jury shall not disclose the testimony of a witness examined before
 92 the grand jury or other matters occurring before the grand jury except as authorized by this
 93 article or Article 1 of Chapter 16 of Title 17 or when required by a court to disclose the
 94 testimony of a witness for the purpose of:

95 (1) Ascertaining whether grand jury testimony is consistent with the testimony given by
 96 the witness before the court; or

97 (2) Determining whether a witness committed perjury.

98 (c) Subsection (b) of this Code section shall not prohibit a prosecuting attorney from using
 99 or disclosing testimony or other matters occurring before the grand jury when, in the

100 opinion of the district attorney, such disclosure is necessary to assist the prosecuting
 101 attorney in the performance of such prosecuting attorney's official duties or as provided in
 102 Code Section 15-12-71 or Article 1 of Chapter 16 of Title 17.

103 (d) Except as otherwise provided in this Code section or Code Section 15-12-71, no
 104 obligation of secrecy shall be imposed on any person who appears before a grand jury as
 105 a witness."

106 **SECTION 3.**

107 Said chapter is further amended by revising Code Section 15-12-74, relating to grand jury
 108 presentment of offenses, as follows:

109 "15-12-74.

110 (a) Grand jurors have a duty to examine or make presentments of such offenses as may or
 111 shall come to their knowledge or observation after they have been sworn. Additionally,
 112 they have the right and power and it is their duty as jurors to make presentments of any
 113 violations of the laws which they may know to have been committed at any previous time
 114 which are not barred by the statute of limitations.

115 (b) If a true bill is returned by the grand jury on any count of an indictment or special
 116 presentment, the indictment or special presentment shall be published in open court. If no
 117 bill is returned by the grand jury on all counts of an indictment or special presentment, the
 118 prosecuting attorney shall file such indictment or special presentment with the clerk."

119 **SECTION 4.**

120 Said chapter is further amended by repealing Code Section 15-12-83, relating to attendance
 121 of stenographer at grand jury proceeding and the use of a recording device, and enacting a
 122 new Code Section 15-12-83 to read as follows:

123 "15-12-83.

124 (a) Upon the request of the district attorney or accused peace officer, a court reporter shall
 125 be authorized to be present and shall attend the grand jury proceedings while any witness
 126 is being examined by the grand jury. Before attending the grand jury proceedings, the
 127 court reporter shall take the following oath:

128 'I do solemnly swear that I will keep secret all things and matters coming to my
 129 knowledge while in attendance upon the grand jury, so help me God.'

130 (b) The district attorney of the circuit in which the county is located shall appoint the court
 131 reporter and, notwithstanding any law to the contrary, fix the compensation therefor, and
 132 such compensation, including the cost of transcripts, shall be paid by the county.

133 (c) The court reporter shall take and transcribe the testimony or any part of the testimony
 134 of any witness who testifies before the grand jury and to furnish the transcript of testimony
 135 to the district attorney.

136 (d) When a witness testifies pursuant to a grant of immunity as provided in Code Section
 137 24-5-507, such testimony shall be transcribed, a copy of the transcript shall be provided to
 138 the district attorney, and the original transcript shall be filed under seal in the office of the
 139 clerk.

140 (e) The court reporter shall be incompetent to testify at any hearing or trial concerning any
 141 matter or thing coming to the knowledge of the court reporter while in attendance upon the
 142 grand jury.

143 (f) Except as otherwise provided in this Code section, a recording, any court reporter's
 144 notes, and any transcript prepared from such recording or notes shall be provided solely to
 145 the district attorney, who shall retain control of such recording, notes, and transcript. The
 146 district attorney may use such materials to the extent such use is appropriate to the proper
 147 performance of his or her official duties."

148 **SECTION 5.**

149 Said chapter is further amended by revising subsection (a) of Code Section 15-12-100,
 150 relating to the procedure for impaneling special grand jury, as follows:

151 "(a) The chief judge of the superior court of any county to which this part applies, on his
 152 or her own motion, on motion or petition of the district attorney, or on petition of any
 153 elected public official of the county or of a municipality lying wholly or partially within
 154 the county, may request the judges of the superior court of the county to impanel a special
 155 grand jury for the purpose of investigating any alleged violation of the laws of this state or
 156 any other matter subject to investigation by grand juries as provided by law."

157 **SECTION 6.**

158 Said chapter is further amended by repealing Code Section 15-12-102, relating to the
 159 applicability of special purpose grand juries, and enacting a new Code Section 15-12-102 to
 160 read as follows:

161 "15-12-102.

162 This part shall apply only to all counties and consolidated city-county governments of this
 163 state. Except as otherwise provided by this part, Part 1 of this article shall apply to the
 164 grand juries authorized by this part."

SECTION 7.

165

166 Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to pretrial
167 proceedings, is amended by revising Code Section 17-7-52, relating to the procedure for
168 indictment of peace officer for crime in the performance of duties, notification, and rights of
169 the officer, as follows:

170 "17-7-52.

171 (a) Before ~~an~~ a bill of indictment or special presentment against a present or former peace
172 officer charging the officer with a crime which is alleged to have occurred while he or she
173 was in the performance of his or her duties is ~~returned by~~ presented to a grand jury, the
174 officer shall be given a copy of the proposed bill of indictment or special presentment and
175 notified in writing of the contemplated action by the district attorney of the county wherein
176 the grand jury shall convene ~~and the officer shall be afforded the rights provided in Code~~
177 ~~Section 45-11-4.~~ Such notice and a copy of the proposed bill of indictment or special
178 presentment shall be provided to the officer not less than 20 days prior to the date upon
179 which a grand jury will begin hearing evidence, and such notice shall inform the officer:

180 (1) That the grand jury is investigating the officer's conduct to determine if there is
181 probable cause to conclude that the officer has violated one or more laws of this state;

182 (2) Of the date upon which the grand jury will begin hearing testimony on the proposed
183 bill of indictment or special presentment and the location of the hearing;

184 (3) That he or she may request, but cannot be compelled, to testify as a witness before
185 the grand jury regarding his or her conduct; and

186 (4) That, if the officer requests to testify before the grand jury, he or she will be
187 permitted to do so at the conclusion of the presentation of the state's case-in-chief and that
188 he or she may be questioned by the prosecuting attorney or members of the grand jury as
189 are any other witnesses.

190 (b) If the officer requests to appear as a witness, he or she shall notify the district attorney
191 any time prior to the date the grand jury will begin hearing testimony in such investigation.
192 The district attorney shall, after consulting with the grand jury, inform the officer in writing
193 of the date and time when he or she shall be present in order to testify and of the procedure
194 that the grand jury will follow pursuant to subsection (c) of this Code section. The district
195 attorney shall further advise the grand jury that an officer has the right to appear and testify
196 or not to appear and testify and that, if the officer chooses not to testify, the grand jury shall
197 not consider that in any way in making its decision.

198 (c) Prior to the introduction of any evidence or the first witness being sworn, the district
199 attorney shall advise the grand jury of the laws applicable to the conduct of such
200 proceedings, all relevant sections of the Code relating to the crime or crimes alleged in the
201 bill of indictment as well as any Code section that excuses or justifies such conduct. In

202 particular, the grand jury shall be advised of Code Sections 16-3-20, 16-3-21, 16-3-23.1,
203 and 17-4-20.

204 (d) If the officer requests to testify before the grand jury and appears at the date and time
205 specified, the case shall proceed as in any other criminal case heard by a grand jury, except
206 that the officer shall be permitted to testify. Such officer may be questioned by the
207 prosecuting attorney or members of the grand jury as are any other witnesses. After the
208 officer has been sworn as a witness and prior to any testimony by the officer, the district
209 attorney shall advise the officer substantially of the following:

210 (1) The officer's appearance before the grand jury is voluntary, and he or she cannot be
211 compelled to appear as a witness;

212 (2) By agreeing to be sworn as a witness on the bill of indictment or special presentment
213 that will be laid before the grand jury, he or she will be asked to testify and answer
214 questions and may be asked to produce records, documents, or other physical evidence;

215 (3) The officer may refuse to answer any question or to produce records, documents, and
216 other physical evidence if a truthful answer to the question or producing such records,
217 documents, or other physical evidence would tend to incriminate the officer or would
218 tend to bring infamy, disgrace, or public contempt upon the officer;

219 (4) Any testimony given by the officer may be used against him or her by the grand jury
220 or in a subsequent legal proceeding; and

221 (5) If the officer is represented by an attorney, the attorney shall have the right to be
222 present in the grand jury room while the officer is testifying, and the officer will be
223 permitted reasonable opportunity to consult with his or her attorney outside the grand jury
224 room.

225 (e) After being sworn as a witness but prior to being asked any questions by the
226 prosecuting attorney or the grand jurors, the officer may make such sworn statement as he
227 or she shall desire. Counsel for the officer shall not propound questions to the officer nor
228 object to questions propounded to the officer on evidentiary grounds.

229 (f) At the conclusion of the officer's testimony, if any, the prosecuting attorney may
230 present rebuttal evidence and advise the grand jury on matters of law.

231 (g) At any time during the presentation of evidence or during deliberations, the grand jury
232 may amend the bill of indictment or special presentment or instruct the district attorney to
233 cause a new bill of indictment or special presentment to be created as in any other case.
234 When a bill of indictment or special presentment is amended or newly created, the accused
235 peace officer and his or her attorney shall be provided a copy of it.

236 (h) No individual other than the jurors, and any interpreter needed to assist a hearing
237 impaired or speech impaired juror, shall be present while the grand jury is deliberating or
238 voting.

239 ~~(b)(i)(1)~~ As used in this subsection, the term 'nonserious traffic offense' means any
 240 offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title
 241 40.

242 (2) The requirements of ~~subsection (a)~~ of this Code section shall apply to all
 243 prosecutions, whether for felonies or misdemeanors ~~or felonies, other than nonserious~~
 244 traffic offenses, and no such prosecution shall proceed either in state or superior court
 245 without a grand jury indictment or special presentment."

246 **SECTION 8.**

247 Said chapter is further amended by revising subsection (e) of Code Section 17-7-70.1,
 248 relating to trial upon accusations in certain felony and misdemeanor cases, as follows:

249 "(e) Notwithstanding the above provisions, nothing in this Code section shall affect the
 250 rights of ~~police officers and~~ public officials to appear before a grand jury as provided in
 251 Code Sections ~~17-7-52~~, 45-11-4; and 45-15-11 or peace officers to appear before a grand
 252 jury as provided in Code Section 17-7-52."

253 **SECTION 9.**

254 Chapter 11 of Title 45 of the Official Code of Georgia Annotated, relating to miscellaneous
 255 offenses concerning public officers and employees, is amended by revising Code Section
 256 45-11-4, relating to unprofessional conduct and indictment, as follows:

257 "45-11-4.

258 (a) As used in this Code section, the term:

259 (1) 'County officer' means any elected county officer, including the judge of the probate
 260 court, clerk of the superior court, tax receiver, tax collector, and tax commissioner where
 261 such office has replaced the tax receiver and tax collector, and any county commissioner.

262 (2) 'Municipal officer' means any mayor or elected member of any municipal governing
 263 authority.

264 (3) 'Public officer' means a county officer, a municipal officer, and state officials as
 265 provided in Code Section 45-15-11.

266 (b) A public officer may be charged under this Code section for:

267 (1) Malpractice, misfeasance, or malfeasance in office;

268 (2) Using oppression or tyrannical partiality in the administration or under the color of
 269 his or her office;

270 (3) When required by law, willfully refusing or failing to preside in or hold his or her
 271 court at the regular terms thereof, or when it is his or her duty under the law to do so;

272 (4) Using any other deliberate means to delay or avoid the due course or proceeding of
 273 law; or

274 (5) Willfully and knowingly demanding more cost than he or she is entitled to by law in
275 the administration and under color of his or her office.

276 (c) A conviction for violating subsection (b) of this Code section shall be punished as for
277 a misdemeanor, and, upon conviction in a court of competent jurisdiction, the accused shall
278 be removed from office.

279 (d) This Code section shall only apply to a public officer charged under subsection (b) of
280 this Code section. This Code section shall not apply when a public officer is charged with
281 any other crime alleged to have occurred while such official was in the performance of an
282 official duty.

283 (e) This Code section shall only apply to a public officer holding office at the time of
284 indictment and not to former office holders.

285 ~~(f) Any indictment brought pursuant to subsection (b) of this Code section shall specially
286 set forth the merits of the complaint against the accused public officer. A copy of the
287 proposed bill of indictment shall be served on the accused public officer at least 15 days
288 before it is presented to the grand jury.~~

289 ~~(g) The accused shall have the right to appear before the grand jury to make such sworn
290 statement as he or she shall desire at the conclusion of the presentation of the state's
291 evidence. The accused shall not be subject to examination, either direct or cross, and shall
292 not have the right individually or through his or her counsel to examine the state's
293 witnesses. The accused and his or her counsel shall have the right to be present during the
294 presentation of all evidence and alleged statements of the accused on the proposed
295 indictment, presentment, or accusation, after which the accused and his or her counsel shall
296 retire instanter from the grand jury room to permit the grand jury to deliberate upon the
297 indictment.~~

298 ~~(h) At any time during the presentation of evidence or during deliberations, the grand jury
299 may amend the indictment or instruct the district attorney to cause a new indictment to be
300 drawn as in any other case. In such case, a copy of the amendment or new indictment, if
301 it relates to the accused public official, shall be provided to the accused public official and
302 his or her counsel.~~

303 ~~(i) If a true bill is returned by the grand jury, the indictment shall, as in other cases, be
304 published in open court and shall be placed on the superior court criminal docket of cases
305 to be tried by a trial jury."~~

306 **SECTION 10.**

307 All laws and parts of laws in conflict with this Act are repealed.