

House Bill 941 (COMMITTEE SUBSTITUTE)

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

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 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 15-12-74, relating to grand jury  
 86 presentment of offenses, as follows:

87 "15-12-74.

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

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

97 **SECTION 3.**

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

101 "15-12-83.

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

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

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

111 (c) The court reporter shall take and transcribe the testimony of any witness appearing  
 112 before the grand jury and any argument or legal advice provided to the grand jury by the  
 113 prosecuting attorney and shall furnish such transcript to the district attorney.

114 (d) When a witness testifies pursuant to a grant of immunity as provided in Code Section  
 115 24-5-507, such testimony shall be transcribed, a copy of the transcript shall be provided to  
 116 the district attorney, and the original transcript shall be filed under seal in the office of the  
 117 clerk.

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

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

126 **SECTION 4.**

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

129 "(a) The chief judge of the superior court of any county to which this part applies, on his  
 130 or her own motion, on motion or petition of the district attorney, or on petition of any  
 131 elected public official of the county or of a municipality lying wholly or partially within  
 132 the county, may request the judges of the superior court of the county to impanel a special

133 grand jury for the purpose of investigating any alleged violation of the laws of this state or  
 134 any other matter subject to investigation by grand juries as provided by law."

135 **SECTION 5.**

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

139 "15-12-102.

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

143 **SECTION 6.**

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

148 "17-7-52.

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

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

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

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

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

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

176 (c) Prior to the introduction of any evidence or the first witness being sworn, the district  
177 attorney shall advise the grand jury of the laws applicable to the conduct of such  
178 proceedings, all relevant sections of the Code relating to the crime or crimes alleged in the  
179 bill of indictment as well as any Code section that excuses or justifies such conduct. In  
180 particular, the grand jury shall be advised of Code Sections 16-3-20, 16-3-21, 16-3-23.1,  
181 and 17-4-20.

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

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

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

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

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

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

203 (e) After being sworn as a witness but prior to being asked any questions by the  
204 prosecuting attorney or the grand jurors, the officer may make such sworn statement as he

205 or she shall desire. Counsel for the officer shall not propound questions to the officer nor  
 206 object to questions propounded to the officer on evidentiary grounds.

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

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

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

217 ~~(b)~~(i)(1) As used in this subsection, the term 'nonserious traffic offense' means any  
 218 offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title  
 219 40.

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

224 **SECTION 7.**

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

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

231 **SECTION 8.**

232 Chapter 11 of Title 45 of the Official Code of Georgia Annotated, relating to miscellaneous  
 233 offenses concerning public officers and employees, is amended by revising Code Section  
 234 45-11-4, relating to unprofessional conduct and indictment, as follows:

235 "45-11-4.

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

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

- 240 (2) 'Municipal officer' means any mayor or elected member of any municipal governing  
 241 authority.
- 242 (3) 'Public officer' means a county officer, a municipal officer, and state officials as  
 243 provided in Code Section 45-15-11.
- 244 (b) A public officer may be charged under this Code section for:
- 245 (1) Malpractice, misfeasance, or malfeasance in office;
- 246 (2) Using oppression or tyrannical partiality in the administration or under the color of  
 247 his or her office;
- 248 (3) When required by law, willfully refusing or failing to preside in or hold his or her  
 249 court at the regular terms thereof, or when it is his or her duty under the law to do so;
- 250 (4) Using any other deliberate means to delay or avoid the due course or proceeding of  
 251 law; or
- 252 (5) Willfully and knowingly demanding more cost than he or she is entitled to by law in  
 253 the administration and under color of his or her office.
- 254 (c) A conviction for violating subsection (b) of this Code section shall be punished as for  
 255 a misdemeanor, and; upon conviction in a court of competent jurisdiction, the accused shall  
 256 be removed from office.
- 257 (d) This Code section shall only apply to a public officer charged under subsection (b) of  
 258 this Code section. This Code section shall not apply when a public officer is charged with  
 259 any other crime alleged to have occurred while such official was in the performance of an  
 260 official duty.
- 261 (e) This Code section shall only apply to a public officer holding office at the time of  
 262 indictment and not to former office holders.
- 263 ~~(f) Any indictment brought pursuant to subsection (b) of this Code section shall specially~~  
 264 ~~set forth the merits of the complaint against the accused public officer. A copy of the~~  
 265 ~~proposed bill of indictment shall be served on the accused public officer at least 15 days~~  
 266 ~~before it is presented to the grand jury.~~
- 267 ~~(g) The accused shall have the right to appear before the grand jury to make such sworn~~  
 268 ~~statement as he or she shall desire at the conclusion of the presentation of the state's~~  
 269 ~~evidence. The accused shall not be subject to examination, either direct or cross, and shall~~  
 270 ~~not have the right individually or through his or her counsel to examine the state's~~  
 271 ~~witnesses. The accused and his or her counsel shall have the right to be present during the~~  
 272 ~~presentation of all evidence and alleged statements of the accused on the proposed~~  
 273 ~~indictment, presentment, or accusation, after which the accused and his or her counsel shall~~  
 274 ~~retire instanter from the grand jury room to permit the grand jury to deliberate upon the~~  
 275 ~~indictment.~~

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

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

284 **SECTION 9.**

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