

The Senate Committee on Judiciary Non-Civil offered the following substitute to HB 941:

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:

SECTION 1.

14 Chapter 12 of Title 15 of the Official Code of Georgia Annotated, relating to juries, is
15 amended in Code Section 15-12-71, relating to the duties of the grand jury, by adding a new
16 paragraph to subsection (b) and two new subsections to read as follows:
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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 eight or more of its members or
23 at the request of the district attorney, shall conduct a review of any incident in which
24 a peace officer's use of deadly force resulted in death or serious bodily injury to
25 another. Except when requested by the district attorney, such review shall only be
26 conducted after the investigative report of the incident has been completed and

27 submitted to the district attorney. The district attorney shall begin assisting the grand
28 jury in its review no later than one year from the date of the incident or, if an attorney
29 was appointed under Code Section 15-18-5, one year from the date of such
30 appointment. A review shall not be conducted pursuant to this paragraph in any case
31 in which the district attorney informs the grand jury that a bill of indictment or special
32 presentment will be presented to a grand jury charging such peace officer with a
33 criminal offense in conjunction with, or arising out of, the incident in which such peace
34 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 its 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 when the grand jury proceedings are in
 103 accordance with Code Section 17-7-52, a court reporter shall be authorized to be present
 104 and shall attend such proceedings. Before attending the grand jury proceedings, the court
 105 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, including compliance with Article 1 of Chapter
 126 16 of Title 17."

127

SECTION 4.

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

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

133 the county, may request the judges of the superior court of the county to impanel a special
 134 grand jury for the purpose of investigating any alleged violation of the laws of this state or
 135 any other matter subject to investigation by grand juries as provided by law."

136 **SECTION 5.**

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

140 "15-12-102.

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

144 **SECTION 6.**

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

149 "17-7-52.

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

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

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

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

166 (4) That, if such officer requests to testify before the grand jury, he or she will be
 167 permitted to do so at the conclusion of the presentation of the state's case-in-chief and that

168 he or she may be questioned by the prosecuting attorney or members of the grand jury as
169 are any other witnesses.

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

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

184 (d) If the officer requests to testify before the grand jury and appears at the date and time
185 specified, the case shall proceed as in any other criminal case heard by a grand jury, except
186 that the officer shall be permitted to testify at the conclusion of the presentation of the
187 state's case-in-chief and that he or she shall only be present in the grand jury room while
188 he or she is testifying. Such officer may be questioned by the prosecuting attorney or
189 members of the grand jury as are any other witnesses. After the officer has been sworn as
190 a witness and prior to any testimony by the officer, the prosecuting attorney shall advise
191 the officer substantially of the following:

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

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

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

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

203 (5) If the officer is represented by an attorney, the attorney shall have the right to be
204 present in the grand jury room while the officer is testifying, and the officer will be

205 permitted reasonable opportunity to consult with his or her attorney outside the grand jury
 206 room.

207 (e) After being sworn as a witness but prior to being asked any questions by the
 208 prosecuting attorney or the grand jurors, the officer may make such sworn statement as he
 209 or she shall desire. The officer's attorney shall not propound questions to the officer nor
 210 object to questions propounded to the officer on evidentiary grounds.

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

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

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

221 ~~(b)~~(i)(1) As used in this subsection, the term 'nonserious traffic offense' means any
 222 offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title
 223 40.

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

228 **SECTION 7.**

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

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

235 **SECTION 8.**

236 Chapter 11 of Title 45 of the Official Code of Georgia Annotated, relating to miscellaneous
 237 offenses concerning public officers and employees, is amended by revising Code Section
 238 45-11-4, relating to unprofessional conduct and indictment, as follows:

239 "45-11-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

271 ~~(g) The accused shall have the right to appear before the grand jury to make such sworn
272 statement as he or she shall desire at the conclusion of the presentation of the state's
273 evidence. The accused shall not be subject to examination, either direct or cross, and shall
274 not have the right individually or through his or her counsel to examine the state's
275 witnesses. The accused and his or her counsel shall have the right to be present during the~~

276 ~~presentation of all evidence and alleged statements of the accused on the proposed~~
277 ~~indictment, presentment, or accusation, after which the accused and his or her counsel shall~~
278 ~~retire instanter from the grand jury room to permit the grand jury to deliberate upon the~~
279 ~~indictment.~~

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

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

288

SECTION 9.

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