

Senate Bill 392

By: Senators Robertson of the 29th, Mullis of the 53rd, Albers of the 56th, Harper of the 7th, Dugan of the 30th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to
2 employment and training of peace officers, so as to enact a bill of rights for peace officers
3 under investigation; to provide for interrogation procedures; to provide for compliance
4 review panels; to provide for the right to bring suit; to provide for the right of notice of
5 disciplinary action; to provide for limitations of disciplinary actions; to provide for related
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to employment and
10 training of peace officers, is amended by adding a new Code section to read as follows:

11 "35-8-7.3.

12 (a) This Code section shall be known and may be cited as the 'Peace Officers Bill of
13 Rights.'

14 (b) Notwithstanding any other provision of law to the contrary, whenever a peace officer
15 serving in the State of Georgia is under investigation and subject to interrogation by
16 members of a law enforcement agency for any reason that could lead to disciplinary action,
17 suspension, demotion, or dismissal, the interrogation shall be conducted under the
18 following conditions:

19 (1) The interrogation shall be conducted at a reasonable hour, preferably at a time when
20 the peace officer is on duty, unless the seriousness of the investigation is of such a degree
21 that immediate action is required;

22 (2) The interrogation shall take place either at the office of the command of the
23 investigating officer or at the office in which the incident allegedly occurred, as
24 designated by the investigating officer or agency;

25 (3) The peace officer under investigation shall be informed of the rank, name, and
26 command of the officer in charge of the investigation, the interrogating officer, and all
27 persons present during the interrogation. All questions directed to the officer under

28 interrogation shall be asked by or through one officer during any one interrogation, unless
29 specifically waived by the officer under investigation;

30 (4) The peace officer under investigation shall be informed of the nature of the
31 investigation before any interrogation begins and of the names of all complainants. All
32 identifiable witnesses shall be interviewed, whenever possible, prior to beginning the
33 interrogation of an officer. The complaint, all witness statements, all existing officer
34 statements, and all other existing evidence, including, but not limited to, incident reports,
35 GPS locator information, and audio or video recordings relating to the incident under
36 investigation, shall be provided to each officer who is the subject of the complaint before
37 beginning any interrogation of that officer. An officer, after being informed of the right
38 to review witness statements, may voluntarily waive the provisions of this paragraph and
39 provide a voluntary statement at any time;

40 (5) Interrogating sessions shall be for reasonable periods of time and shall allow for such
41 personal necessities and recess periods as are reasonably necessary;

42 (6) The formal interrogation of a peace officer, including all recess periods, shall be
43 recorded on audio tape or otherwise preserved in such a manner as to allow a transcript
44 to be prepared, and there shall be no unrecorded questions or statements. Upon the
45 request of an interrogated officer, a copy of any recording of an interrogation session
46 shall be made available to the interrogated officer no later than 72 hours, excluding
47 holidays and weekends, following his or her interrogation;

48 (7) If the peace officer under interrogation is under arrest, or is likely to be placed under
49 arrest as a result of the interrogation, he or she shall be informed of all of his or her rights
50 before commencing the interrogation;

51 (8) The peace officer under interrogation shall not be subjected to offensive language or
52 be threatened with transfer, dismissal, or disciplinary action. A promise or reward shall
53 not be made as an inducement to answer any questions; and

54 (9) At the request of a peace officer under investigation, he or she has the right to be
55 represented by legal counsel of his or her choice, who shall be present at all times during
56 the interrogation whenever the interrogation relates to the officer's involvement in a
57 critical incident resulting in serious injury or death.

58 (c) The rights and privileges provided by this Code section do not limit the right of a law
59 enforcement agency to discipline or to pursue criminal charges against an officer.

60 (d) A peace officer shall have the right to bring a civil suit against any person, group of
61 persons, organization, or corporation, or the head of an organization or corporation, for
62 damages, either pecuniary or otherwise, suffered during the officer's performance of
63 official duties, for abridgment of the officer's civil rights arising out of the officer's

64 performance of official duties, or for filing a complaint against the officer which the person
65 knew was false when it was filed.

66 (e) A dismissal, demotion, transfer, reassignment, or other action that might result in loss
67 of pay or benefits, or that might otherwise be considered a punitive measure, may not be
68 taken against a peace officer unless the peace officer is notified of the action and the reason
69 or reasons for the action before the effective date of the action.

70 (f) Whenever a peace officer is subject to disciplinary action consisting of suspension with
71 loss of pay, demotion, or dismissal, the officer or the officer's representative shall, upon
72 request, be provided with:

73 (1) A complete copy of the investigative file;

74 (2) The final investigative report and all evidence; and

75 (3) The opportunity to address the findings in the report with the employing law
76 enforcement agency before imposing disciplinary action consisting of suspension with
77 loss of pay, demotion, or dismissal.

78 (g) No peace officer shall be dismissed, disciplined, demoted, suspended, or denied
79 promotion, transfer, or reassignment or be otherwise discriminated against in regard to
80 employment or appointment, or be threatened with any such treatment, by reason of his or
81 her exercise of the rights granted by this Code section.

82 (h) Except as provided in this subsection, disciplinary action, suspension, demotion, or
83 dismissal shall not be undertaken by a law enforcement agency against a peace officer for
84 any act, omission, or other allegation of misconduct if the investigation of the allegation
85 is not completed within 120 days after the date the agency receives notice of the allegation.
86 If the agency determines that disciplinary action is appropriate, it shall complete its
87 investigation and give notice in writing to the peace officer of its intent to proceed with
88 disciplinary action, along with a proposal of the specific action sought, including length of
89 suspension, if applicable, as follows:

90 (1) Notice to the officer shall be provided within 120 days after the date the agency
91 received notice of the alleged misconduct, except as follows:

92 (A) The running of the limitations period may be tolled for a period specified in a
93 written waiver of the limitation by the peace officer under investigation;

94 (B) The running of the limitations period is tolled during the time that any criminal
95 investigation or prosecution is pending in connection with the act, omission, or other
96 allegation of misconduct;

97 (C) If the investigation involves an officer who is incapacitated or otherwise
98 unavailable, the running of the limitations period is tolled during the period of such
99 incapacitation or unavailability;

100 (D) In a multijurisdictional investigation, the limitations period may be extended for a
101 period of time reasonably necessary to facilitate the coordination of the agencies
102 involved;

103 (E) The running of the limitations period may be tolled for emergencies or natural
104 disasters during the time period wherein the Governor has declared a state of emergency
105 within the jurisdictional boundaries of the law enforcement agency; and

106 (F) The running of the limitations period is tolled during the time that the officer's
107 compliance hearing proceeding is continuing, beginning with the filing of the notice of
108 violation and a request for a hearing and ending with the written determination of the
109 compliance review panel or upon the violation being remedied by the law enforcement
110 agency;

111 (2) An investigation against a peace officer may be reopened, notwithstanding the
112 limitations period for commencing disciplinary action, demotion, or dismissal, if:

113 (A) Significant new evidence has been discovered that is likely to affect the outcome
114 of the investigation; and

115 (B) The evidence could not have reasonably been discovered in the normal course of
116 investigation or the evidence resulted from the predisciplinary response of the officer;
117 and

118 (3) Any disciplinary action resulting from an investigation that is reopened pursuant to
119 paragraph (2) of this subsection shall be completed within 90 days after the date the
120 investigation is reopened.

121 (i) Every law enforcement agency shall establish and put into operation a system for the
122 receipt, investigation, and determination of complaints received by such agency from any
123 person, which shall be the procedure for investigating a complaint against a law
124 enforcement officer and for determining whether to proceed with disciplinary action or to
125 file disciplinary charges, notwithstanding any other law or ordinance to the contrary. When
126 law enforcement personnel assigned the responsibility of investigating the complaint
127 prepare an investigative report or summary, regardless of form, the person preparing the
128 report shall, at the time the report is completed:

129 (1) Verify that the contents of the report are true and accurate based upon the person's
130 personal knowledge, information, and belief;

131 (2) Include the following statement, sworn and subscribed to:

132 'I, the undersigned, do hereby swear under penalty of perjury that, to the best of my
133 personal knowledge, information, and belief, I have not knowingly or willfully deprived,
134 or allowed another to deprive, the subject of the investigation of any of the rights
135 contained in the Constitution of the United States, the Constitution of Georgia, or any
136 Georgia statutes'; and

137 (3) The requirements of paragraphs (1) and (2) of this subsection shall be completed prior
 138 to determining whether to proceed with disciplinary action or file disciplinary charges.
 139 This subsection shall not preclude the council from exercising its authority under Georgia
 140 law.

141 (j)(1) A complaint filed against a peace officer with a law enforcement agency and all
 142 information obtained pursuant to the investigation by the agency of the complaint shall
 143 be deemed confidential and exempt from disclosure under the provisions of Article 4 of
 144 Chapter 18 of Title 50 until the investigation ceases to be active or until the chief
 145 administrator of the agency or his or her designee provides written notice to the officer
 146 who is the subject of the complaint, either personally or by mail, that the agency has
 147 either:

148 (A) Concluded the investigation with a finding not to proceed with disciplinary action
 149 or to file charges; or

150 (B) Concluded the investigation with a finding to proceed with disciplinary action or
 151 to file charges.

152 (2) The officer who is the subject of the complaint, along with legal counsel or any other
 153 representative of his or her choice, may review the complaint and all statements,
 154 regardless of form made, by the complainant and witnesses.

155 (3) For the purposes of this subsection, an investigation shall be considered active so long
 156 as it continues with a reasonable, good faith anticipation that an administrative finding
 157 will be made in the foreseeable future. An investigation shall be presumed to be inactive
 158 if no finding is made within 45 days after the complaint is filed.

159 (k) Notwithstanding other provisions of this Code section, the complaint and any
 160 investigative information shall be available to:

161 (1) Law enforcement agencies, correctional agencies, and prosecuting attorneys in the
 162 conduct of a lawful criminal investigation;

163 (2) A peace officer may attach to the investigative file a concise statement in response to
 164 any items included in the file identified by the officer as derogatory, and copies of such
 165 items shall be made available to the officer; and

166 (3) Any person who is a participant in an internal investigation, including the
 167 complainant, the subject of the investigation, the subject's legal counsel or a representative
 168 of his or her choice, the investigator conducting the investigation, and any witnesses in the
 169 investigation, who willfully discloses any information obtained pursuant to the agency's
 170 investigation, including, but not limited to, the identity of the officer under investigation,
 171 the nature of the questions asked, information revealed, or documents furnished in
 172 connection with a confidential internal investigation of an agency, before such complaint,
 173 document, action, or proceeding becomes a public record as provided in this Code section

174 commits a misdemeanor, punishable as provided in Code Section 16-10-24. However,
175 this subsection shall not limit a law enforcement officer's ability to gain access to
176 information under paragraph (1) of this subsection. Additionally, the chief administrator
177 of a law enforcement agency or his or her designee is not precluded by this subsection
178 from acknowledging the existence of a complaint and the fact that an investigation is
179 underway.

180 (1)(1) Each law enforcement agency of this state shall establish a compliance review panel
181 which shall be composed of three members. One member shall be selected by the chief
182 administrator of the law enforcement agency, one member shall be selected by the peace
183 officer under investigation, and a third member shall be selected by the other two
184 members. Law enforcement agencies having more than 100 peace officers shall utilize
185 a five-member board, with two members being selected by the chief administrator of the
186 law enforcement agency, two members being selected by the peace officer under
187 investigation, and the fifth member being selected by the other four members. The board
188 members shall be peace officers selected from any state, county, or municipal law
189 enforcement agency in this state.

190 (2) If any law enforcement agency, including investigators in its internal affairs or
191 professional standards division or an assigned investigating supervisor, intentionally fails
192 to comply with the requirements of this part, the following procedures apply:

193 (A) The peace officer shall advise the investigator of the intentional violation of the
194 requirements of this part which is alleged to have occurred. The officer's notice of
195 violation is sufficient to notify the investigator of the requirements of this part which are
196 alleged to have been violated and the factual basis of each violation;

197 (B) If the investigator fails to cure the violation or continues the violation after being
198 notified by the peace officer, the officer shall request the chief administrator of the
199 agency or his or her designee be informed of the alleged intentional violation. Once this
200 request is made, the interview of the officer shall cease, and the officer's refusal to
201 respond to further investigative questions shall not constitute insubordination or any
202 similar type of violation;

203 (C) Within three working days, a written notice of violation and request for a
204 compliance review hearing shall be filed with the chief administrator of the agency or
205 his or her designee which must contain sufficient information to identify the
206 requirements of this part which are alleged to have been violated and the factual basis
207 of each violation. All evidence related to the investigation shall be preserved for review
208 and presentation at the compliance review hearing. For purposes of confidentiality, the
209 compliance review panel hearing shall be considered part of the original investigation;
210 and

211 (D) Unless otherwise remedied by the agency before the hearing, a compliance review
212 hearing shall be conducted within ten working days after the request for a compliance
213 review hearing is filed, unless by mutual agreement of the officer and agency or for
214 extraordinary reasons an alternate date is chosen. The panel shall review the
215 circumstances and facts surrounding the alleged intentional violation.

216 (3) It is the responsibility of the compliance review panel to determine whether or not the
217 investigator or law enforcement agency intentionally violated the requirements of this
218 part. It may hear evidence, review relevant documents, and hear argument before making
219 such a determination; provided however, that all evidence received shall be strictly limited
220 to the allegation under consideration and may not be related to any disciplinary charges
221 pending against the officer. The investigative materials are considered confidential for
222 purposes of the compliance review hearing and determination.

223 (4) The officer under investigation bears the burden of proof to establish that the violation
224 of this part was intentional. The standard of proof for such a determination shall be by a
225 preponderance of the evidence. The determination of the panel shall be made at the
226 conclusion of the hearing, in writing, and filed with the chief administrator of the law
227 enforcement agency and the officer under investigation.

228 (5) If the alleged violation is sustained as intentional by the compliance review panel, the
229 chief administrator of the law enforcement agency shall immediately remove the
230 investigator from any further involvement with the investigation of the officer.
231 Additionally, the chief administrator shall cause an investigation to be initiated against the
232 investigator determined to have intentionally violated the requirements of this part for
233 purposes of agency disciplinary action. If that investigation is sustained, the sustained
234 allegations against the investigator shall be forwarded to the council for review as an act
235 of official misconduct or misuse of position."

236 **SECTION 2.**

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