The Senate Committee on Rules offered the following substitute to HB 838:

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 24-5-510 and Article 8 of Chapter 2 of Title 35 of the Official Code of Georgia Annotated, relating to privileged communications between law enforcement officers and peer counselors and Office of Public Safety Officer Support, respectively, so as to change the name of the Office of Public Safety Officer Support; to amend Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to employment and training of peace officers, so as to enact a bill of rights for peace officers under investigation; to provide for interrogation procedures; to provide for compliance review panels; to provide for the right to bring suit; to provide for the right of notice of disciplinary action; to provide for limitations of disciplinary actions; to provide for bias motivated by intimidation against first responders; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 24-5-510 of the Official Code of Georgia Annotated, relating to privileged communications between law enforcement officers and peer counselors, is amended by revising paragraph (2) of subsection (a) as follows:

"(2) 'Peer counselor' means:

(A) An employee of the Office of Public Safety Officer Support within the Department of Public Safety; or

(B) An individual who is certified by the support coordinator of the Office of Public Safety Officer Support within the Department of Public Safety pursuant to subsection (b) of Code Section 35-2-163 who is an employee of a public entity that employs public safety officers and who is designated by the executive head of such public entity."
SECTION 2.
Article 8 of Chapter 2 of Title 35 of the Official Code of Georgia Annotated, relating to Office of Public Safety Officer Support, is amended in Code Section 35-2-160, relating to definitions, by revising paragraph (5) as follows:

"(5) 'Support coordinator' means the coordinator of the Office of Public Safety Officer Support within the Department of Public Safety."

SECTION 3.
Said article is further amended by revising Code Section 35-2-161, relating to Office of Public Safety Officer Support established, as follows:

"35-2-161. There is established the Office of Public Safety Officer Support within the Department of Public Safety."

SECTION 4.
Said article is further amended in Code Section 35-2-163, relating to peer counseling and critical incident support services, certification, and employment of necessary staff, by revising subsection (a) as follows:

"(a) The Office of Public Safety Officer Support within the Department of Public Safety may respond to and provide peer counselors and critical incident support services to any requesting public entities that employ public safety officers. The office may respond to and provide peer counselors and critical incident support services for the benefit of public safety officers experiencing post-traumatic stress disorder or other trauma associated with public safety. The office shall develop a course of training in critical incident stress management and in any other related subject matter for the benefit of public safety officers."

SECTION 5.
Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to employment and training of peace officers, is amended by adding a new Code section to read as follows:

"35-8-7.3. (a) This Code section shall be known and may be cited as the 'Peace Officers Bill of Rights.'
(b) Notwithstanding any other provision of law to the contrary, whenever a peace officer serving in the State of Georgia is under investigation and subject to interrogation by members of a law enforcement agency for any reason that could lead to disciplinary action,
suspension, demotion, or dismissal, the interrogation shall be conducted under the following conditions:

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

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

(3) The peace officer under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by or through one officer during any one interrogation, unless specifically waived by the officer under investigation;

(4) The peace officer under investigation shall be informed of the nature of the investigation before any interrogation begins. All identifiable witnesses shall be interviewed, whenever possible, prior to beginning the interrogation of an officer. An officer, after being informed of the right to review witness statements, may voluntarily waive the provisions of this paragraph and provide a voluntary statement at any time;

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

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

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

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

(9) At the request of a peace officer under investigation, he or she has the right to be represented by legal counsel of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer's involvement in a critical incident resulting in serious injury or death.
(c) The rights and privileges provided by this Code section do not limit the right of a law enforcement agency to discipline or to pursue criminal charges against an officer.

(d) A peace officer shall have the right to bring a civil suit against any person, group of persons, organization, or corporation, or the head of an organization or corporation, for damages, either pecuniary or otherwise, suffered during the officer's performance of official duties, for abridgment of the officer's civil rights arising out of the officer's performance of official duties, or for filing a complaint against the officer which the person knew was false when it was filed.

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

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

   (1) A complete copy of the investigative file;
   (2) The final investigative report and all evidence; and
   (3) The opportunity to address the findings in the report with the employing law enforcement agency before imposing disciplinary action consisting of suspension with loss of pay, demotion, or dismissal.

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

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

   (1) Notice to the officer shall be provided within 120 days after the date the agency received notice of the alleged misconduct, except as follows:
      (A) The running of the limitations period may be tolled for a period specified in a written waiver of the limitation by the peace officer under investigation;
(B) The running of the limitations period is tolled during the time that any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of misconduct;

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

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

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

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

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

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

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

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

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

(1) Verify that the contents of the report are true and accurate based upon the person's personal knowledge, information, and belief;
(2) Include the following statement, sworn and subscribed to:

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

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

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

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

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

(2) The officer who is the subject of the complaint, along with legal counsel, may review the complaint and all statements, regardless of form made, by the complainant and witnesses.

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

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

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

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

(3) Any person who is a participant in an internal investigation, including the complainant, the subject of the investigation, the subject's legal counsel, the investigator
conducting the investigation, and any witnesses in the investigation, who willfully
discloses any information obtained pursuant to the agency's investigation, including, but
not limited to, the identity of the officer under investigation, the nature of the questions
asked, information revealed, or documents furnished in connection with a confidential
internal investigation of an agency, before such complaint, document, action, or
proceeding becomes a public record as provided in this Code section commits a
misdemeanor, punishable as provided in Code Section 16-10-24. However, this
subsection shall not limit a law enforcement officer's ability to gain access to information
under paragraph (1) of this subsection. Additionally, the chief administrator of a law
enforcement agency or his or her designee is not precluded by this subsection from
acknowledging the existence of a complaint and the fact that an investigation is
underway.”

SECTION 6.
Said chapter is further amended by adding a new Code section to read as follows:

“35-8-7.4.
(a) As used in this Code section, the term 'first responder' means any firefighter of a
municipal, county, or volunteer fire department, a peace officer as defined in Code Section
35-8-2, and an emergency medical technician as defined in Code Section 16-10-24.2.
(b) A person commits the offense of bias motivated intimidation when such person
maliciously and with the specific intent to intimidate, harass, or terrorize another person
because of that person's actual or perceived employment as a first responder:
(1) Causes death or serious bodily harm to another person; or
(2) Causes damage to or destroys any real or personal property of a person because of
actual or perceived employment as a first responder without permission and the amount
of the damage exceeds $500.00 or the value of the property destroyed exceeds $500.00.
(c) Any person that violates subsection (b) of this Code section shall be guilty of the
offense of bias motivated intimidation and, upon conviction thereof, shall be punished by
imprisonment of not less than one nor more than five years, a fine of not more
than $5,000.00, or both.
(d) Each violation of this Code section shall constitute a separate offense and shall not
merge with any other crime.
(e) A sentence imposed under this Code section shall run consecutively to any sentence for
any other offense related to the act or acts establishing an offense under this Code section.
(f) Charges of violating subsection (b) of this Code section shall not be prosecuted by way
of an accusation but only by indictment or special presentment by a grand jury.”
SECTION 7.

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