

The House Committee on Judiciary Non-Civil offers 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:

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

district attorney. The district attorney shall begin assisting the grand jury in its review no later than one year from the date of the incident or the date a different prosecuting attorney is appointed by the Attorney General under Code Section 15-18-5 or 15-18-65, whichever is later. A review shall not be conducted pursuant to this paragraph in any case in which the district attorney informs the grand jury that a bill of indictment or special presentment will be presented to a grand jury charging such peace officer with a criminal offense in conjunction with, or arising out of, the incident in which such peace officer's use of deadly force resulted in death or serious bodily injury to another.

(C) Not less than 20 days prior to the date upon which the grand jury shall begin hearing evidence in such review, the chief executive officer of the law enforcement agency and the peace officer shall be notified of such date and the time and place of the grand jury meeting, provided that nothing in this paragraph shall require either officer to make a presentation to the grand jury unless requested by the grand jury to do so.

(D) When the grand jury is conducting a review pursuant to this paragraph, the testimony of any witness appearing before it and any argument or legal advice provided to the grand jury by the prosecuting attorney shall be recorded by a court reporter. The cost of conducting such review, including, but not limited to, the cost of any recordation and transcription of testimony, shall be paid out of the county treasury, upon the certificate of the judge of the superior court, as other court expenses are paid.

(E) Prior to the introduction of any evidence or the first witness being sworn, the district attorney shall advise the grand jury of the laws applicable to the conduct of such review. In particular, the grand jury shall be advised of Code Sections 16-3-20, 16-3-21, 16-3-23.1, and 17-4-20."

"(e)(1) If the grand jury conducts a review pursuant to paragraph (5) of subsection (b) of this Code section, and the grand jury does not request that the district attorney create a bill of indictment or special presentment, the grand jury shall prepare a report or issue a general presentment based upon its inspection, and any such report or presentment shall be subject to publication as provided for in Code Section 15-12-80.

(2) Such report or general presentment shall include a summary of the evidence considered by the grand jury and the grand jury's findings of the facts regarding the incident.

(3) Such report or general presentment shall be returned to the court by the grand jury and published in open court, and the report or general presentment shall be filed with the clerk.

(4) If the grand jury does not request that the district attorney create a bill of indictment or special presentment, the district attorney shall, upon the release of such report or general presentment and unless otherwise ordered by the court, make available for

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

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

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

## **SECTION 2.**

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

"15-12-74.

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

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

**SECTION 3.**

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

"15-12-83.

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

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

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

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

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

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

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

**SECTION 4.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SECTION 7.

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

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

## SECTION 8.

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

"45-11-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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