

House Bill 288

By: Representatives Gaines of the 120th, Reeves of the 99th, Crowe of the 118th, Lumsden of the 12th, Clifton of the 131st, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 2 of Chapter 6 of Title 5, Chapter 4 of Title 9, Article 1 of Chapter 18 of
2 Title 15, and Chapter 16 of Title 17 of the Official Code of Georgia Annotated, relating to
3 appellate practice, declaratory judgments, prosecuting attorneys, and criminal trials,
4 respectively, so as to provide for declaratory judgments in instances involving accusations
5 made by a prosecuting attorney regarding the credibility of a peace officer; to provide for
6 appellate rights; to provide for notice by a prosecuting attorney intending to question the
7 credibility of a peace officer; to provide for court review and approval of information relating
8 to the credibility of a witness who is a peace officer prior to disclosure by a prosecuting
9 attorney to a defendant; to provide for notice and hearing; to provide for remittal of certain
10 findings to the Georgia Peace Officer Standards and Training Council; to provide for rights
11 of the peace officer in relation to such hearing; to amend Chapter 8 of Title 35 of the Official
12 Code of Georgia Annotated, relating to employment and training of peace officers, so as to
13 provide for review by the Georgia Peace Officer Standards and Training Council of
14 accusations of peace officer impairment as a witness; to provide for notice; to provide
15 standards for determination of credibility of accusations; to provide hearing rights; to restrict
16 the use of information relating to the credibility of a witness who is a peace officer for
17 employment purposes in certain instances; to provide for definitions; to amend Part 1 of
18 Article 4 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated, relating to

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19 general provisions relative to grand juries, so as to provide for conforming changes; to
20 provide for related matters; to repeal conflicting laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
24 appellate practice, is amended in subsection (a) of Code Section 5-6-35, relating to cases
25 requiring application for appeal, requirements for application, exhibits, response, issuance
26 of appellate court order regarding appeal, procedure, supersedeas, jurisdiction of appeal, and
27 appeals involving nonmonetary judgments in custody cases, by striking "and" at the end of
28 paragraph (12), by replacing the period at the end of paragraph (13) with "; and", and by
29 adding a new paragraph to read as follows:

30 "(14) Appeals from cases involving the credibility of a peace officer to serve as a witness
31 pursuant to an impairment letter as such term is defined in Code Section 35-8-2 or
32 disclosures relative to the credibility of a peace officer pursuant to Code Section
33 17-16-1.1."

34 **SECTION 2.**

35 Chapter 4 of Title 9 of the Official Code of Georgia Annotated, relating to declaratory
36 judgments, is amended Code Section 9-4-2, relating to declaratory judgements authorized
37 and force and effect, by revising subsection (c) and adding a new subsection to read as
38 follows:

39 "(c) In addition to the cases specified in subsection (a) of this Code section, the respective
40 superior courts of this state shall have power, upon petition or other appropriate pleading,
41 to declare rights and other legal relations of any peace officer involving accusations made
42 by a prosecuting attorney within an impairment letter, as such term is defined in Code

43 Section 35-8-2, and that appears to the court to require that the declaration should be made
44 in the interest of justice. Such declaration shall have the force and effect of a final
45 judgment or decree and be reviewable as such.

46 (d) Relief by declaratory judgment shall be available, notwithstanding the fact that the
47 complaining party has any other adequate legal or equitable remedy or remedies."

48 **SECTION 3.**

49 Article 1 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated, relating to
50 prosecuting attorneys, is amended by adding a new Code section to read as follows:

51 "15-18-33.

52 (a) As used in this Code section, the term 'impairment letter' shall have the same meaning
53 as set forth in Code Section 35-8-2.

54 (b) A prosecuting attorney shall notify a peace officer who is the subject of an impairment
55 letter in writing by registered or certified mail or statutory overnight delivery to the last
56 known address of the peace officer of the prosecuting attorney's intent to send such letter.
57 Such notice shall include the actions the prosecuting attorney intends to take relative to
58 such peace officer or any recommendation of the prosecuting attorney relative to such
59 peace officer's employment. Such notice shall further include the specific basis for the
60 prosecuting attorney's decisions or recommendations, including:

61 (1) The location and description of all evidence relating to the case involving the peace
62 officer and the impairment letter in question;

63 (2) A list of witnesses relevant to the impairment letter in question, including names,
64 contact information, last known addresses, criminal history, and dates of birth;

65 (3) The existence of any and all writings, recordings, video, or other material evidence
66 as it relates to the impairment letter in question;

67 (4) The name and contact information of the prosecuting attorney intending to send the
68 impairment letter; and

69 (5) The date on which a determination to send the impairment letter in question was
70 made."

71 **SECTION 4.**

72 Chapter 16 of Title 17 of the Official Code of Georgia Annotated, relating to discovery in
73 criminal trials, is amended in Article 1, relating to definitions and felony cases, by adding a
74 new Code section to read as follows:

75 "17-16-1.1.

76 (a) For purposes of this Code section, the term:

77 (1) 'Council' means the Georgia Peace Officer Standards and Training Council.

78 (2) 'Peace officer' shall have the same meaning as set forth in Code Section 35-8-2.

79 (b) Any disclosure of information by a prosecuting attorney pursuant to this chapter which
80 relates to the credibility of a witness who is a peace officer shall be submitted to the trial
81 court for approval prior to disclosure; provided, however, that any matter involving a final
82 decision of the council against a peace officer pursuant to Chapter 8 of Title 35, the
83 'Georgia Peace Officer Standards and Training Act,' shall not be subject to such approval.
84 No later than 20 days prior to trial, the prosecuting attorney shall send written notice by
85 regular mail to any peace officer of his or her intention to disclose information to a
86 defendant regarding the credibility of such officer as a witness and that such officer is
87 entitled to a hearing before the trial court regarding such disclosure. The trial court shall
88 hold an evidentiary hearing to determine whether the proposed disclosure relating to the
89 credibility of the peace officer shall be made available to the defendant. Such hearing shall
90 be held at least ten days prior to trial.

91 (c) If, after a hearing held pursuant to subsection (b) of this Code section, a trial court
92 finds, by a preponderance of the evidence, that any proposed disclosure of information
93 relating to the credibility of a peace officer as a witness to be based upon unsubstantiated
94 claims of untruthfulness or unfounded allegations of bias, such court shall order the

95 prosecuting attorney to suppress such disclosure. Upon a finding of any proposed
96 disclosure relating to the credibility of a peace officer to serve as a witness to be proper,
97 the trial court shall forward a copy of such finding to the council.

98 (d) A peace officer who is the subject of a hearing held pursuant to subsection (b) of this
99 Code section shall have the right to:

100 (1) Representation by an attorney of his or her choosing at his or her own expense;

101 (2) Subpoena documents and witnesses; and

102 (3) Obtain a transcript of such hearing at the expense of the prosecuting attorney.

103 (e) A peace officer shall have the right to obtain review of a final determination made
104 pursuant to this Code section pursuant to the provisions of Code Section 5-6-35."

105 **SECTION 5.**

106 Said chapter is further amended by redesignating Code Sections 17-16-2 through 17-16-10
107 as Article 2 and Code Sections 17-16-20 through 17-16-23 as Article 3.

108 **SECTION 6.**

109 Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to employment and
110 training of peace officers, is amended in Code Section 35-8-2, relating to definitions, by
111 adding a new paragraph to read as follows:

112 "(5.01) 'Impairment letter' means written information submitted to a law enforcement
113 agency by a prosecuting attorney relating to the credibility of a peace officer employed
114 by such agency to serve as a witness at trial or an intent by a prosecuting attorney to
115 dismiss criminal charges due to the involvement of a peace officer employed by such
116 agency."

117 **SECTION 7.**

118 Said chapter is further amended in Code Section 35-8-7, relating to powers and duties of the
119 Georgia Peace Officer Standards and Training Council generally, by adding a new paragraph
120 to read as follows:

121 "(14.1) To review and provide a determination upon the validity of an impairment letter;"

122 **SECTION 8.**

123 Said chapter is further amended in Code Section 35-8-7.1, relating to authority of council to
124 refuse certificate to applicant or to discipline council certified officer or exempt officer,
125 grounds, restoration of certificate, emergency suspension of certification, notice of
126 investigation, and retention of records, by revising subsections (e) through (g) and by adding
127 a new subsection to read as follows:

128 "(e)(1) Upon receipt of an impairment letter from a law enforcement agency, the council
129 shall initiate a review of the validity of any claim in such letter and notify the peace
130 officer of such review. It shall be sufficient to identify the officer, state that review of an
131 impairment letter has been initiated, and identify the prosecuting attorney that submitted
132 the impairment letter.

133 (2) In reviewing and making a determination regarding an impairment letter, the council
134 shall consider:

135 (A) Any bias alleged by the prosecuting attorney against the defendant or any potential
136 witnesses when the impairment letter relates to a specific case;

137 (B) Allegations or instances of previous misleading, deceptive, untrue, or fraudulent
138 statements made by the peace officer to the prosecuting attorney or while serving as a
139 witness for the prosecuting attorney;

140 (C) Whether the peace officer has pleaded guilty or been convicted by final judgment,
141 and all appeals have been exhausted, of a crime punishable as a false swearing under
142 Code Section 16-10-71; and

143 (D) Any allegations of acts or omissions which would otherwise subject the peace
144 officer to discipline pursuant to subsection (a) of this Code section.

145 (3) Upon completion of a review of an impairment letter, the council shall notify the
146 peace officer identified in the impairment letter and the head of the law enforcement
147 agency that employs such officer of its determination regarding the validity of the
148 information asserted by the prosecuting attorney. If the council determines from the
149 review of the impairment letter that discipline of the peace officer is warranted, notice
150 sent pursuant to this paragraph shall include such information.

151 (f) Upon initiating an investigation of an officer for possible disciplinary action or upon
152 disciplining an officer pursuant to this Code section, the council shall notify the head of the
153 law enforcement agency that employs such officer of the investigation or disciplinary
154 action. In the case of an investigation, it shall be sufficient to identify the officer and state
155 that a disciplinary investigation has been opened. ~~Notice of the initiation of an~~
156 ~~investigation shall be sent by priority mail.~~ If the investigation is completed without any
157 further action, notice of the termination of such investigation shall also be provided to the
158 head of the employing agency. In the case of disciplinary action, the notice shall identify
159 the officer and state the nature of the disciplinary action taken. The notice of disposition
160 shall be sent only after the action of the council is deemed final. ~~Such notice shall be sent~~
161 ~~by priority mail.~~

162 ~~(f)~~(g) If the certification of an officer is suspended or revoked by either the executive
163 director or council pursuant to this Code section, ~~then~~ the council shall notify the head of
164 the law enforcement agency that employs the officer; the district attorney of the judicial
165 circuit in which such law enforcement agency is located; and the solicitor of the state court,
166 if any, of the county in which such law enforcement agency is located. It shall be sufficient
167 for this notice to identify the officer and state the length of time, if known, that the officer
168 will not have powers of arrest. ~~Such notice shall be sent by priority mail.~~

169 (h) Any notice required by this Code section shall be sent by certified mail or certificate
170 of mailing. As used in this subsection, the term 'certificate of mailing' means a delivery
171 method utilized by the United States Postal Service which provides evidence that an item
172 has been sent and the date such item was accepted.

173 ~~(g)~~(i) Notwithstanding Article 5 of Chapter 18 of Title 50, records of an investigation of
174 an officer by the council, including, but not limited to, records used to investigate
175 complaints against an officer and polygraph case files containing official polygraph reports,
176 shall be retained for 30 years following the date that such investigation is deemed
177 concluded by the council and then such records may be destroyed; provided, however, that
178 the council shall have the authority to destroy such records prior to such 30 years where
179 such officer is deceased and no action upon the complaint was taken by the council beyond
180 the council's initial intake of such complaint."

181 **SECTION 9.**

182 Said chapter is further amended in Code Section 35-8-7.2, relating to administrative
183 procedure, hearings, and review, by revising subsection (a) as follows:

184 "(a) Except as otherwise provided in subsection (b) of this Code section, proceedings of
185 the council in the exercise of its authority to issue any certificate, conduct a review of an
186 impairment letter, or discipline any peace officer under the terms of this chapter shall be
187 conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
188 Procedure Act.' In all such proceedings the council shall have authority to compel the
189 attendance of witnesses and the production of any book, writing, or document upon the
190 issuance of a subpoena therefor. In any hearing in which the fitness of a peace officer or
191 applicant is in question, the council may exclude all persons from its deliberation of the
192 appropriate action and may, when it deems necessary, speak to the peace officer or
193 applicant in private. All final determinations, findings, and conclusions of the council
194 under this chapter are final and conclusive decisions of the matters involved."

195 **SECTION 10.**

196 Said chapter is further amended by revising Code Section 35-8-8, relating to requirements
197 for appointment or certification of persons as peace officers and preemployment attendance
198 at basic training course and "employment related information" defined, and by redesignating
199 the current provisions of subsection (c) of said Code section as a new Code section to read
200 as follows:

201 "35-8-8.

202 (a) Any person employed or certified as a peace officer shall:

203 (1) Be at least 18 years of age;

204 (2) Be a citizen of the United States;

205 (3) Have a high school diploma or its recognized equivalent;

206 (4) Not have been convicted by any state or by the federal government of any crime the
207 punishment for which could have been imprisonment in the federal or state prison or
208 institution nor have been convicted of sufficient misdemeanors to establish a pattern of
209 disregard for the law, provided that, for the purposes of this paragraph, violations of
210 traffic laws and other offenses involving the operation of motor vehicles when the
211 applicant has received a pardon shall not be considered;

212 (5) Be fingerprinted for the purpose of conducting a fingerprint based search at the
213 Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the
214 existence of any criminal record;

215 (6) Possess good moral character as determined by investigation under procedure
216 established by the council and fully cooperate during the course of such investigation;

217 (7) Be found, after examination by a licensed physician or surgeon, to be free from any
218 physical, emotional, or mental conditions which might adversely affect his or her exercise
219 of the powers or duties of a peace officer; and

220 (8) Successfully complete a job related academy entrance examination provided for and
221 administered by the council in conformity with state and federal law. Such examination

222 shall be administered prior to entrance to the basic course provided for in Code Sections
223 35-8-9 and 35-8-11. The council may change or modify such examination and shall
224 establish the criteria for determining satisfactory performance on such examination. The
225 provisions of this paragraph establish only the minimum requirements of academy
226 entrance examinations for peace officer candidates in this state; each law enforcement
227 unit is encouraged to provide such additional requirements and any preemployment
228 examination as it deems necessary and appropriate. Any person with a degree from a
229 postsecondary institution accredited by a regional accrediting agency recognized by the
230 United States Department of Education shall be deemed to have met the requirements of
231 this paragraph.

232 (b) Any person authorized to attend the basic training course prior to employment as a
233 peace officer shall meet the requirements of subsection (a) of this Code section.

234 35-8-8.1.

235 ~~(c)(1)~~ For purposes of this subsection (a) As used in this Code section, the term
236 'employment related information' means written information contained in a prior
237 employer's records or personnel files that relates to an applicant's, candidate's, or peace
238 officer's performance or behavior while employed by such prior employer, including
239 performance evaluations, records of disciplinary actions, and eligibility for rehire. Such
240 term shall not include information prohibited from disclosure by federal law or any
241 document not in the possession of the employer at the time a request for such information
242 is received.

243 ~~(b)(1)(2)~~ Where an investigation is conducted for the purpose of hiring, certifying, or
244 continuing the certification of a peace officer, an employer shall disclose employment
245 related information to the investigating law enforcement agency upon receiving a written
246 request from such agency. Disclosure shall only be required under this subsection if the
247 law enforcement agency's request is accompanied by a copy of a signed, notarized

248 statement from the applicant, candidate, or peace officer releasing and holding harmless
249 such employer from any and all liability for disclosing complete and accurate information
250 to the law enforcement agency.

251 ~~(3)~~(2) An employer may charge a reasonable fee to cover actual costs incurred in
252 copying and furnishing documents pursuant to this subsection to a requesting law
253 enforcement agency, including retrieving and redacting costs, provided such amount shall
254 not exceed \$25.00 or 25¢ per page, whichever is greater. No employer shall be required
255 to prepare or create any document not already in the employer's possession at the time a
256 request for employment related information is received. Any employment related
257 information provided pursuant to this subsection that is not subject to public disclosure
258 while in the possession of a prior employer shall continue to be privileged and protected
259 from public disclosure as a record of the requesting law enforcement agency.

260 ~~(4)~~(3) No employer or law enforcement agency shall be subject to any civil liability for
261 any cause of action by virtue of disclosing complete and accurate information to a law
262 enforcement agency in good faith and without malice pursuant to this subsection. In any
263 such cause of action, malice or bad faith shall only be demonstrated by clear and
264 convincing evidence. Nothing ~~contained~~ in this subsection shall be construed so as to
265 affect or limit rights or remedies provided by federal law.

266 ~~(5)~~(4) Before taking final action on an application for employment based, in whole or in
267 part, on any unfavorable employment related information received from a previous
268 employer, a law enforcement agency shall inform the applicant, candidate, or peace
269 officer that it has received such employment related information and that the applicant,
270 candidate, or peace officer may inspect and respond in writing to such information. Upon
271 the applicant's, candidate's, or peace officer's request, the law enforcement agency shall
272 allow him or her to inspect the employment related information and to submit a written
273 response to such information. The request for inspection shall be made within five
274 business days from the date that the applicant, candidate, or peace officer is notified of

275 the law enforcement agency's receipt of such employment related information. The
 276 inspection shall occur not later than ten business days after said notification. Any
 277 response to the employment related information shall be made by the applicant,
 278 candidate, or peace officer not later than three business days after his or her inspection.
 279 ~~(6)~~(5) Nothing ~~contained~~ in this ~~Code section~~ subsection shall be construed so as to
 280 require any person to provide self-incriminating information or otherwise to compel any
 281 person to act in violation of his or her right guaranteed by the Fifth Amendment of the
 282 United States Constitution and Article I, Section I, Paragraph XVI of the Georgia
 283 Constitution. It shall not be a violation of this ~~Code section~~ subsection for a person to fail
 284 to provide requested information based on a claim that such information is
 285 self-incriminating provided that notice of such claim is served in lieu of the requested
 286 information. An action against such person to require disclosure on the grounds that the
 287 claim of self-incrimination is not substantiated may be brought in the superior court of
 288 the county of such party's residence or where such information is located.

289 (c) A law enforcement agency that receives an impairment letter shall forward a copy of
 290 such letter to the council within 30 days of receipt for review pursuant to Code Section
 291 35-8-7.1. No employer or law enforcement agency shall discharge, suspend, demote, or
 292 take any other adverse employment action against a peace officer based solely upon the
 293 receipt of an impairment letter; provided, however, that such prohibition shall not apply to
 294 an impairment letter which has been reviewed and substantiated by the council."

295 **SECTION 11.**

296 Part 1 of Article 4 of Chapter 12 of Title 15 of the Official Code of Georgia Annotated,
 297 relating to general provisions relative to grand juries, is amended by replacing "Article 1 of
 298 Chapter 16 of Title 17" with "Article 2 of Chapter 16 of Title 17" wherever the phrase
 299 appears in Code Section 15-12-71, relating to duties of grand jury, and in Code Section
 300 15-12-73, relating to exclusion of admissions and communications among grand jurors.

301

SECTION 12.

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