

House Bill 288 (COMMITTEE SUBSTITUTE)

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 1 of Chapter 18 of Title 15 of the Official Code of Georgia Annotated,
2 relating to prosecuting attorneys, so as to require notice by prosecuting attorneys that intend
3 to question the credibility of a peace officer and place the name of such officer on a Giglio
4 list; to authorize requests for reconsideration of such action; to provide for the development
5 of policies and procedures by the Prosecuting Attorneys' Council of the State of Georgia;
6 to provide for immunity; to provide for definitions; to amend Chapter 8 of Title 35 of the
7 Official Code of Georgia Annotated, relating to employment and training of peace officers,
8 so as to provide for review by the Georgia Peace Officer Standards and Training Council of
9 placement of the name of a peace officer on a Giglio list; to provide for notice; to provide
10 standards for determination of credibility of such placement; to restrict the use of information
11 relating to a Giglio list for employment purposes in certain instances; to provide for
12 definitions; to amend Code Section 50-18-72 of the Official Code of Georgia Annotated,
13 relating to when public disclosure not required, so as to exempt records relative to Giglio lists
14 from public disclosure; to provide for related matters; to repeal conflicting laws; and for
15 other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

H. B. 288 (SUB)

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

"15-18-33.

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

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

(2) 'Giglio list' shall have the same meaning as set forth in Code Section 35-8-2.

(b) Upon the placement of the name of a peace officer on a Giglio list by a prosecuting attorney, such prosecuting attorney shall send written notice of the intent to place the name of a peace officer on such list by registered or certified mail or statutory overnight delivery to the last known address of the employer of the affected peace officer and the Georgia Peace Officer Standards and Training Council. Such notice shall include:

(1) The factual basis for the prosecuting attorney's decision to place the name of the peace officer on a Giglio list:

(2) A statement informing the affected peace officer and his or her employing agency of the right to request relevant materials from the prosecuting attorney;

(3) A statement informing the affected peace officer and his or her employing agency of the right to provide supplemental information to the prosecuting attorney; and

(4) A statement informing the affected peace officer and his or her employing agency of the right to request reconsideration by the prosecuting attorney of the placement of such peace officer on a Giglio list.

(c) An affected peace officer or his or her employing agency shall be authorized to submit a request for reconsideration on the decision to place the name of a peace officer on a Giglio list no later than 30 days after receipt of notice by such peace officer's employing agency pursuant to subsection (b) of this Code section. Upon receipt of a request for reconsideration pursuant to this subsection, the prosecuting attorney shall promptly review such request and either remove the name of the affected peace officer from the Giglio list

45 or deny the request for reconsideration and keep the name of the affected peace officer on
46 the Giglio list. Any such denial shall be in writing and include the specific reasons for such
47 decision. If no request for reconsideration pursuant to this subsection is submitted by an
48 affected peace officer or his or her employing agency, the name of the affected peace
49 officer shall remain on the Giglio list unless and until the prosecuting attorney removes
50 such name from the Giglio list due to receipt of material information that was unknown or
51 unavailable at the time of the initial decision or when any investigation warrants removal
52 in the opinion of the prosecuting attorney.

53 (d) When a prosecuting attorney makes a determination to remove an affected peace
54 officer's name from a Giglio list, such prosecuting attorney shall provide notice of such
55 removal to the employing agency of the affected peace officer and the Georgia Peace
56 Officer Standards and Training Council within 14 days of the removal in the same manner
57 as provided by subsection (b) of this Code section.

58 (e) The Prosecuting Attorneys' Council of the State of Georgia shall develop policies and
59 procedures for the purposes of this Code section, which shall include placement and
60 removal of the name of an affected peace officer on a Giglio list, the reconsideration
61 process, and notice requirements. Any prosecuting attorney's office that maintains a Giglio
62 list shall adopt the policies and procedures established pursuant to this subsection.

63 (f) A prosecuting attorney shall be authorized to use an affected peace officer's inclusion
64 on a Giglio list when making charging decisions related to a case and shall disclose to
65 defense counsel or a defendant in any criminal case as required by law the fact of and basis
66 for inclusion of an affected officer on such list including any notice or relevant materials
67 as provided in subsection (b) of this Code section.

68 (g) A prosecuting attorney shall be immune from civil liability that might otherwise incur
69 or be imposed for placement of the name of a peace officer on a Giglio list unless the
70 affected peace officer demonstrates that his or her inclusion on such a list was done with
71 actual malice or with actual intent to cause injury to the affected peace officer.

(h) Nothing in this Code section shall be construed to modify federal law or binding court precedent relating to disclosure duties of a prosecuting attorney in criminal prosecutions."

SECTION 2.

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

"(.1) 'Affected peace officer' means a peace officer whose name is listed on a Giglio list."

"(5.01) 'Giglio list' means a list of names compiled and maintained by a prosecuting attorney for purposes of compliance with the United States Constitution or ethical standards relative to witness credibility and required disclosure of certain evidence to defense counsel."

SECTION 3.

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

"(14.1) Upon notice from a prosecuting attorney, to review the factual basis for the inclusion of any affected peace officer on a Giglio list;"

SECTION 4.

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

95 "(e)(1) Upon receipt of notice from a prosecuting attorney that the name of a peace
96 officer has been placed on a Giglio list, the council shall initiate a review of the factual
97 basis provided in such notice and notify the affected peace officer and the head of the law
98 enforcement agency that employs such affected peace officer of such review. It shall be
99 sufficient to identify the affected peace officer, state that review of the affected peace
100 officer's name on a Giglio list has been initiated, and identify the prosecuting attorney
101 who sent such notice.

102 (2) In reviewing the inclusion of the name of an affected peace officer on a Giglio list
103 pursuant to this subsection, the council shall consider:

104 (A) Any bias or injury against a specific defendant alleged by the prosecuting attorney
105 to have occurred when the prosecuting attorney's notice relates to a specific criminal
106 prosecution;

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

110 (C) Whether the affected peace officer has pleaded guilty or been convicted, by final
111 judgment and when all appeals have been exhausted, of an offense punishable as false
112 swearing within the meaning of Code Section 16-10-71 or an offense of perjury
113 pursuant to Code Section 16-10-70; and

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

116 (3) Upon completion of review pursuant to this subsection, the council shall notify the
117 affected peace officer and the employing agency of the affected peace officer of its
118 determination concerning the factual basis asserted by the prosecuting attorney. If the
119 council determines from its review that discipline of the affected peace officer is
120 warranted, notice sent pursuant to this paragraph shall include such information. If the
121 council determines that discipline of the affected peace officer is not warranted, such

matter shall be administratively dismissed, the affected peace officer's public status shall not reflect the occurrence of such investigation, and notice of such action shall be delivered to the head of the employing agency, the affected peace officer, and the prosecuting attorney who placed the affected peace officer on a Giglio list. No peace officer shall be suspended, revoked, or otherwise sanctioned solely based upon the placement of his or her name on a Giglio list.

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

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

(h) Any notice required by this Code section shall be sent by certified mail or certificate of mailing. As used in this subsection, the term 'certificate of mailing' means a delivery

method utilized by the United States Postal Service which provides evidence that an item has been sent and the date such item was accepted.

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

SECTION 5.

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

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

SECTION 6.

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

"35-8-8.

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

(1) Be at least 18 years of age;

(2) Be a citizen of the United States;

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

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

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

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

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

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

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

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

35-8-8.1.

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

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

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

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

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

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

the law enforcement agency's receipt of such employment related information. The inspection shall occur not later than ten business days after said notification. Any response to the employment related information shall be made by the applicant, candidate, or peace officer not later than three business days after his or her inspection.

~~(6)(5)~~ Nothing ~~contained~~ in this ~~Code section~~ subsection shall be construed so as to require any person to provide self-incriminating information or otherwise to compel any person to act in violation of his or her right guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitution. It shall not be a violation of this ~~Code section~~ subsection for a person to fail to provide requested information based on a claim that such information is self-incriminating provided that notice of such claim is served in lieu of the requested information. An action against such person to require disclosure on the grounds that the claim of self-incrimination is not substantiated may be brought in the superior court of the county of such party's residence or where such information is located.

(c) A law enforcement agency that receives notice from a prosecuting attorney that the name of an affected peace officer has been placed on a Giglio list shall forward a copy of such notice to the council within 30 days of receipt for review pursuant to Code Section 35-8-7.1."

SECTION 7.

Said chapter is further amended by revising Code Section 35-8-14, which is designated as reserved, as follows:

"35-8-14.

(a) Upon receipt of notice from a prosecuting attorney that a peace officer employed by the law enforcement agency has been placed on a Giglio list, such agency shall provide a copy of such notice to the affected peace officer in as timely manner as possible, not to exceed three days from the date of receipt. If the affected peace officer is no longer

employed by the law enforcement agency that receives such notice, the law enforcement agency shall forward such notice to be served in person or delivered by certified mail or statutory overnight delivery, return receipt requested, to the last known address of the affected peace officer.

(b) A law enforcement agency that employs an affected peace officer shall not demote, suspend, discharge, impose discipline, or take adverse employment action upon an affected peace officer solely based upon the placement of such peace officer's name on a Giglio list.

(c) A law enforcement agency that employs an affected peace officer shall be authorized to demote, suspend, discharge, impose discipline, or take adverse employment action upon an affected peace officer when:

(1) An internal investigation establishes, based upon a preponderance of the evidence, that a factual basis exists for the reason provided by the prosecuting attorney for placement of the affected peace officer on a Giglio list; or

(2) The council has imposed discipline upon the affected peace officer for the conduct identified by the prosecuting attorney which was the basis for placement of such officer on the Giglio list Reserved."

SECTION 8.

Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure not required, is amended by adding a new paragraph to subsection (a) to read as follows:

"(4.1) Records relating to Giglio lists, as such term is defined in Code Section 35-8-2;"

SECTION 9.

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