

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

A BILL TO BE ENTITLED
AN ACT

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

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 SECTION 1.

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

16 "(2) 'Peer counselor' means;

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

19 (B) An individual who is certified by the support coordinator of the Office of Public
20 Safety Officer Support within the Department of Public Safety pursuant to
21 subsection (b) of Code Section 35-2-163 who is an employee of a public entity that
22 employs public safety officers and who is designated by the executive head of such
23 public entity."

24

SECTION 2.

25 Article 8 of Chapter 2 of Title 35 of the Official Code of Georgia Annotated, relating to
 26 Office of Public Safety Officer Support, is amended in Code Section 35-2-160, relating to
 27 definitions, by revising paragraph (5) as follows:

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

30

SECTION 3.

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

33 "35-2-161.

34 There is established the Office of Public Safety Officer Support within the Department of
 35 Public Safety."

36

SECTION 4.

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

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

48

SECTION 5.

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

51 "35-8-7.3.

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

54 (b) Notwithstanding any other provision of law to the contrary, whenever a peace officer
 55 serving in the State of Georgia is under investigation and subject to interrogation by
 56 members of a law enforcement agency for any reason that could lead to disciplinary action,

57 suspension, demotion, or dismissal, the interrogation shall be conducted under the
58 following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116 (h) Except as provided in this subsection, disciplinary action, suspension, demotion, or
 117 dismissal shall not be undertaken by a law enforcement agency against a peace officer for
 118 any act, omission, or other allegation of misconduct if the investigation of the allegation
 119 is not completed within 120 days after the date the agency receives notice of the allegation.

120 If the agency determines that disciplinary action is appropriate, it shall complete its
 121 investigation and give notice in writing to the peace officer of its intent to proceed with
 122 disciplinary action, along with a proposal of the specific action sought, including length of
 123 suspension, if applicable, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

200 (3) Any person who is a participant in an internal investigation, including the
 201 complainant, the subject of the investigation, the subject's legal counsel, the investigator

202 conducting the investigation, and any witnesses in the investigation, who willfully
 203 discloses any information obtained pursuant to the agency's investigation, including, but
 204 not limited to, the identity of the officer under investigation, the nature of the questions
 205 asked, information revealed, or documents furnished in connection with a confidential
 206 internal investigation of an agency, before such complaint, document, action, or
 207 proceeding becomes a public record as provided in this Code section commits a
 208 misdemeanor, punishable as provided in Code Section 16-10-24. However, this
 209 subsection shall not limit a law enforcement officer's ability to gain access to information
 210 under paragraph (1) of this subsection. Additionally, the chief administrator of a law
 211 enforcement agency or his or her designee is not precluded by this subsection from
 212 acknowledging the existence of a complaint and the fact that an investigation is
 213 underway."

214 **SECTION 6.**

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

216 "35-8-7.4.

217 (a) As used in this Code section, the term 'first responder' means any firefighter of a
 218 municipal, county, or volunteer fire department, a peace officer as defined in Code Section
 219 35-8-2, and an emergency medical technician as defined in Code Section 16-10-24.2.

220 (b) A person commits the offense of bias motivated intimidation when such person
 221 maliciously and with the specific intent to intimidate, harass, or terrorize another person
 222 because of that person's actual or perceived employment as a first responder:

223 (1) Causes death or serious bodily harm to another person; or

224 (2) Causes damage to or destroys any real or personal property of a person because of
 225 actual or perceived employment as a first responder without permission and the amount
 226 of the damage exceeds \$500.00 or the value of the property destroyed exceeds \$500.00.

227 (c) Any person that violates subsection (b) of this Code section shall be guilty of the
 228 offense of bias motivated intimidation and, upon conviction thereof, shall be punished by
 229 imprisonment of not less than one nor more than five years, a fine of not more
 230 than \$5,000.00, or both.

231 (d) Each violation of this Code section shall constitute a separate offense and shall not
 232 merge with any other crime.

233 (e) A sentence imposed under this Code section shall run consecutively to any sentence for
 234 any other offense related to the act or acts establishing an offense under this Code section.

235 (f) Charges of violating subsection (b) of this Code section shall not be prosecuted by way
 236 of an accusation but only by indictment or special presentment by a grand jury."

237

SECTION 7.

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