

HOUSE BILL 18¹: POLICE ACCOUNTABILITY ACT

Amending O.C.G.A. Title 35, §50-20-24, §50-21-25, and §17-4-20; and All Laws in Conflict with the Same

First Signature: Representative Sandra Scott (76th)

Co-Sponsors: Representative Erica Thomas (39th) and Representative Donna McLeod (105th)

Summary: “A BILL to be entitled an Act to amend Title 35 of the O.C.G.A., relating to law enforcement officers and agencies, so as to require that certain procedures be followed by peace officers upon making contact with individuals for law enforcement purposes; to require all law enforcement agencies provide a body-worn camera to each peace officer of the law enforcement agency; to amend Article 2 of Chapter 21 of Title 50 of the O.C.G.A., relating to state tort claims; to amend Article 2 of Chapter 4 of Title 17 of the O.C.G.A., relating to arrest by law enforcement officers generally, so as to revise use of force standards; to provide for related matters; to repeal conflicting laws; and for other purposes.”²

Status: House Second Readers.³

TEXT OF HOUSE BILL 18⁴

PART I SECTION 1-1.

This Act shall be known and may be cited as the “Police Accountability Act.”

PART II SECTION 2-1.

¹ H.B. 18, 156th Gen. Assemb., 2nd Reg. Sess. (Ga. 2021), *available at* <https://www.legis.ga.gov/api/legislation/document/20212022/196598> (last visited Dec. 30, 2021).

² *2021-2022 Regular Session-HB 18, Police Accountability Act; enact*, GA. GEN. ASSEMB., *available at* <https://www.legis.ga.gov/legislation/58803> (last visited Feb. 22, 2022) [hereinafter H.B. 18 Status Sheet].

³ *Id.*

⁴ H.B. 18, *supra* note 1.

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by adding a new chapter to read as follows:

“CHAPTER 1A

35-1A-1.

As used in this chapter, the term:

(1) ‘Contacts’ means an interaction with an individual, whether or not the person is in a motor vehicle, initiated by a peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law. Such term shall not include routine interactions with the public at the point of entry or exit from a controlled area.

(2) ‘Demographic information’ means race, ethnicity, sex, and approximate age.

(3) ‘Law enforcement agency’ means any agency, organ, or department of this state, or a subdivision or municipality thereof, whose primary functions include the enforcement of criminal or traffic laws; the preservation of public order; the protection of life and property; or the prevention, detection, or investigation of crime, including, but not limited to, any department or unit organized by a college or university for purposes of Chapter 8 of Title 20.

(4) ‘Peace officer’ means any person appointed or employed in conformity with Chapter 8 of Title 35.

(5) ‘Serious bodily injury’ means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.

35-1A-2.

(a) On and after January 1, 2022, every peace officer shall provide, without being asked, the peace officer's business card to any person whom the peace officer has detained in a traffic stop but has not cited or arrested. The business card shall include identifying information about the peace officer, including, but not limited to, the peace officer's name, division, precinct, and badge or other identification number; a telephone number that may be used, if necessary, to report any comments, positive or negative, regarding the traffic stop; and information about how to file a complaint related to the contact.

(b) A peace officer shall have a legal basis for making a contact, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law. After making a contact, a peace officer shall report to the law enforcement agency employing such peace officer:

(1) The perceived demographic of the person contacted, provided that the identification of these characteristics is based on the observation and perception of the peace officer making the contact and other available data;

(2) Whether the contact was a traffic stop;

(3) The time, date, and location of the contact;

(4) The duration of the contact;

(5) The reason for the contact;

(6) The suspected crime; and

(7) The result of the contact, such as:

(A) No action, warning, citation, property seizure, or arrest;

(B) If a warning or citation was issued, the warning provided or violation cited;

(C) If an arrest was made, the offense charged;

(D) If the contact was a traffic stop, the information collected, which is limited to the driver; and

(E) The actions taken by the peace officer during the contact, including, but not limited to, whether:

- (i) The peace officer asked for consent to search the person, and, if so, whether consent was provided;
- (ii) The peace officer searched the person or any property and, if so, the basis for the search and the type of contraband or evidence discovered, if any; and
- (iii) The peace officer seized any property, and, if so, the type of property that was seized and the basis for seizing the property.

35-1A-3.

- (a) On and after July 1, 2024, all law enforcement agencies shall provide a body-worn camera to each peace officer of the law enforcement agency.
- (b)(1) Except as provided for under paragraph (2) of this subsection, on and after July 1, 2024, every peace officer shall wear and activate a body-worn camera when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law.
 - (2)(A) A peace officer may turn off a body-worn camera to avoid recording personal information that is not case related; when working on an unrelated assignment; when there is a long break in the incident or contact that is not related to the initial incident; and in administrative, tactical, and management discussions.
 - (B) A peace officer shall not need to wear or activate a body-worn camera if the peace officer is working undercover.
- (c) If a peace officer fails to activate a body-worn camera as required by this Code section or tampers with body-worn or dash-camera footage or operation when required to activate the camera, there shall be a permissive inference in any investigation or legal proceeding, excluding criminal proceedings against the peace officer, that the missing footage would have reflected misconduct by the peace officer. If a peace officer fails to activate or reactivate his or her body-worn camera, any statements sought to be introduced in a prosecution through

the peace officer related to the incident that were not recorded due to the peace officer's failure to activate or reactivate the body-worn camera as required by this Code section shall be presumptively inadmissible. Notwithstanding any other provision of law, this subsection shall not apply if the body-worn camera was not activated due to a malfunction of the body-worn camera and the peace officer was not aware of the malfunction prior to the incident.

(d)(1) In addition to any criminal liability and penalty under the law, if a court, administrative law judge, or through a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or tampered with any body-worn or dash camera, except as permitted in this subsection, the peace officer's employer shall impose discipline up to and including termination.

(2) In addition to any criminal liability and penalty under the law, if a court, administrative law judge, or through a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or tampered with any body-worn or dash camera, except as permitted in this subsection, with the intent to conceal unlawful or inappropriate actions or obstruct justice, the Georgia Peace Officer Standards and Training Council shall suspend the peace officer's certification for a period of not less than one year and the suspension may only be lifted within the period of the suspension if the peace officer is exonerated by a court.

(3) In addition to any criminal liability and penalty under the law, if a court, administrative law judge, or through a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or tampered with any body-worn or dash camera, except as permitted in this section, with the intent to conceal unlawful or inappropriate actions, or obstruct justice, in an incident resulting in a civilian death, the Georgia Peace Officer Standards and Training Council shall permanently revoke the peace officer's

certification and the revocation may only be overturned if the peace officer is exonerated by a court.

(e) Law enforcement agencies shall establish and follow a retention schedule for body-worn camera recordings in compliance with Article 5 of Chapter 18 of Title 50.

(f)(1) Notwithstanding any other provision of law, for all incidents in which there is a complaint of peace officer misconduct by another peace officer, a civilian, or a nonprofit organization, through notice to the law enforcement agency involved in the alleged misconduct, the law enforcement agency shall release all unedited video and audio recordings of the incident, including those from body-worn cameras, dash cameras, or otherwise collected through investigation, to the public within 21 days after the law enforcement agency received the complaint of misconduct.

(2) Notwithstanding any other provision of law, all video and audio recordings depicting a death shall be provided to the decedent's family at least 24 hours prior to public disclosure.

(3)(A) Notwithstanding any other provision of this subsection, any video that raises substantial privacy concerns for defendants, victims, witnesses, juveniles, or informants, including, but not limited to, video depicting nudity; a sexual assault; a medical emergency; a mental health crisis; a victim interview; a minor, including any images or information that might undermine the requirement to keep certain juvenile records confidential; personal information other than the name or license plate of any person not arrested, cited, charged, or issued a written warning, including a government-issued identification number, date of birth, address, or financial information; significantly explicit and gruesome bodily injury, unless the injury was caused by a peace officer; or the interior of a home or treatment facility, shall

be redacted or blurred to protect the substantial privacy interest while still allowing public release.

(B) If redaction or blurring is insufficient to protect the substantial privacy interest, the law enforcement agency shall release the video to the victim or, if the victim is deceased, to the victim's family within 21 days after receipt of the complaint of misconduct.

(C) A witness, victim, or defendant may waive in writing the individual privacy interest that may be implicated by public release. Upon receipt of a written waiver of the applicable privacy interest, accompanied by a request for release, the law enforcement agency shall not redact or withhold release to protect that privacy interest.

(4) Any video that would substantially interfere with or jeopardize an active or ongoing investigation may be withheld from the public, except that the video shall be released no later than 30 days from the date of the allegation of misconduct. In all cases when release of a video is delayed in reliance on this subsection, the prosecuting attorney shall prepare a written explanation of the interference or jeopardy that justifies the delayed release, contemporaneous with the refusal to release the video. Upon release of the video, the prosecuting attorney shall release the written explanation to the public.

(5) If criminal charges have been filed against any party to the incident, that party must file any constitutional objection to release of the recording in the pending criminal case before the 21 day period provided for in paragraph (1) of this subsection expires. The court shall hold a hearing on any objection no later than seven days after it is filed and issue a ruling no later than three days after the hearing.

35-1A-4.

(a) On and after July 1, 2024, the Attorney General shall create an annual report including all of the information that is reported to the Attorney General pursuant to subsection (b) of this Code section, aggregated and broken down by the law enforcement agency that employs peace officers, along with the underlying data.

(b) Beginning January 1, 2024, and on January 1 in each year thereafter, each law enforcement agency that employs peace officers shall report to the Attorney General:

(1) All use of force by its peace officers that results in death or serious bodily injury, including:

(A) The date, time, and location of the use of force;

(B) The perceived demographic of the person contacted, provided that the identification of these characteristics is based on the observation and perception of the peace officer;

(C) The names of all peace officers who were at the scene, identified by whether the peace officer was involved in the use of force or not;

(D) The type of force used, the severity and nature of the injury, whether the peace officer suffered physical injury, and the severity of the peace officer's injury;

(E) Whether the peace officer was on duty at the time of the use of force;

(F) Whether the use of force resulted in a law enforcement agency investigation and the result of the investigation; and

(G) Whether the use of force resulted in a citizen complaint and the resolution of that complaint;

(2) All instances when a peace officer resigned while under investigation for violating a policy of the law enforcement agency;

(3) All data relating to contacts conducted by its peace officers, including:

- (A) The perceived demographic of the person contacted, provided that the identification of these characteristics is based on the observation and perception of the peace officer making the contact and other available data;
- (B) Whether the contact was a traffic stop;
- (C) The time, date, and location of the contact;
- (D) The duration of the contact;
- (E) The reason for the contact;
- (F) The suspected crime;
- (G) The result of the contact, such as:
 - (i) No action, warning, citation, property seizure, or arrest;
 - (ii) If a warning or citation was issued, the warning provided or violation cited;
 - (iii) If an arrest was made, the offense charged; or
 - (iv) If the contact was a traffic stop, the information collected, which is limited to the driver;
- (H) The actions taken by the peace officer during the contact, including, but not limited to, whether:
 - (i) The peace officer asked for consent to search the person, and, if so, whether consent was provided;
 - (ii) The peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any; and
 - (iii) The peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property; and
- (4) All instances of unannounced entry into a residence, with or without a warrant, including:
 - (A) The date, time, and location of the use of unannounced entry; and
 - (B) The perceived demographic of the subject of the unannounced entry, provided that the identification of these characteristics is based on the

observation and perception of the peace officer making the entry and other available data.

(c) The Attorney General and law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of the subject of the use of force, victim of the official misconduct, or persons contacted, searched, or subjected to a property seizure. Notwithstanding any provision of law to the contrary, the data reported pursuant to this Code section shall be available to the public pursuant to subsection (d) of this Code section.

(d) The Attorney General shall maintain a state-wide database with data collected pursuant to this Code section, in a searchable format, and publish the database on his or her official website.

(e) Law enforcement agencies which do not comply with the requirements of this Code section are subject to the withholding of state funding or state administered federal funding.

35-1A-5.

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by peace officers or by officials or employees of any governmental agency that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of this state or the Constitution or laws of the United States. Whenever the Attorney General has reasonable cause to believe that a violation of this Code section has occurred, the Attorney General, for or in the name of this state, may in a civil action obtain any and all appropriate relief to eliminate the pattern or practice.

35-1A-6.

Notwithstanding any provision of law and pursuant to the authority provided for under Code Section 35-8-7.1, if any peace officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force, or is found civilly liable for using excessive force, the Georgia Peace Officer Standards and Training Council shall permanently revoke the peace officer's certification. The Georgia Peace Officer Standards and Training Council shall not, under any circumstances, reinstate the peace officer's certification or grant new certification to the peace officer unless the peace officer is exonerated by a court. The Georgia Peace Officer Standards and Training Council shall record each decertified peace officer in the database created pursuant to Code Section 35-1A-4.

35-1A-7.

In response to a protest or demonstration, a law enforcement agency and any person acting on behalf of the law enforcement agency shall not:

- (1) Discharge kinetic impact projectiles and all other nonlethal or less lethal projectiles in a manner that targets the head, pelvis, or back;
- (2) Discharge kinetic impact projectiles indiscriminately into a crowd; or
- (3) Use chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to ensure the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order.”

PART III
SECTION 3-1.

Article 2 of Chapter 21 of Title 50 of the Official Code of Georgia Annotated, relating to state tort claims, is amended by revising paragraph (7) of Code Section 50-21-24, relating to exceptions to state liability, as follows:

~~“(7) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel~~ Libel, slander, or interference with contractual rights;”

SECTION 3-2.

Said article is further amended by revising subsection (a) of Code Section 50-21-25, relating to immunity of state officers or employees for acts within scope of official duties or employment, officer or employee not named in action against state, and settlement or judgment, as follows:

“(a) This article constitutes the exclusive remedy for any tort committed by a state officer or employee. A state officer or employee who commits a tort while acting within the scope of his or her official duties or employment is not subject to lawsuit or liability therefor; provided, however, that a law enforcement officer who is alleged to have committed misconduct or a violation of law while acting within the scope of his or her official duties or employment shall be subject to lawsuit or liability. However, nothing in this article shall be construed to give a state officer or employee immunity from suit and liability if it is proved that the officer’s or employee’s conduct was not within the scope of his or her official duties or employment.”

SECTION 3-3.

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

“50-21-25.1.

(a) As used in this Code section, the term ‘law enforcement officer’ means any agent or officer of this state, a political subdivision or municipality of this state, an authority of this state, or a college or university who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public

order, the protection of life and property, or the prevention, detection, or investigation of crime.

(b) A law enforcement officer who, under color of law, subjects or causes to be subjected any other person to the deprivation of any individual rights secured by the Constitution of this state or the Constitution of the United States by, including, but not limited to, failing to intervene, shall be liable to the injured party for legal or equitable relief or any other appropriate relief.

(c) No statutory immunities or immunities at law, including, but not limited to, qualified immunity, shall be a defense to liability pursuant to this Code section.

(d) To the extent necessary for any actions to proceed under this Code section, the defense of sovereign immunity is waived as to any claim, counterclaim, cross-claim, or third-party claim brought in the courts of this state by an aggrieved person seeking legal or equitable relief or any other appropriate relief, including, but not limited to, reasonable attorney fees, pursuant to this Code section.”

PART IV SECTION 4-1.

Article 2 of Chapter 4 of Title 17 of the Official Code of Georgia Annotated, relating to arrest by law enforcement officers generally, is amended by revising Code Section 17-4-20, relating to authorization of arrests with and without warrants generally, use of deadly force, adoption or promulgation of conflicting regulations, policies, ordinances, and resolutions, and authority of nuclear power facility security officer, as follows:

“17-4-20.

(a) An arrest for a crime may be made by a law enforcement officer:

- (1) Under a warrant; or
- (2) Without a warrant if:

- (A) The offense is committed in such officer's presence or within such officer's immediate knowledge;
- (B) The offender is endeavoring to escape;
- (C) The officer has probable cause to believe that an act of family violence, as defined in Code Section 19-13-1, has been committed;
- (D) The officer has probable cause to believe that the offender has violated a criminal family violence order, as defined in Code Section 16-5-95; provided, however, that such officer shall not have any prior or current familial relationship with the alleged victim or the offender;
- (E) The officer has probable cause to believe that an offense involving physical abuse has been committed against a vulnerable adult, who shall be for the purposes of this subsection a person 18 years old or older who is unable to protect himself or herself from physical or mental abuse because of a physical or mental impairment; or
- (F) For other cause there is likely to be failure of justice for want of a judicial officer to issue a warrant.

~~(b) Sheriffs and peace officers who are appointed or employed in conformity with Chapter 8 of Title 35 may use deadly force to apprehend a suspected felon only when the officer reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; when the officer reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others; or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm. Nothing in this Code section shall be construed so as to restrict such sheriffs or peace officers from the use of such reasonable nondeadly force as may be necessary to apprehend and arrest a suspected felon or misdemeanor.~~

~~(e) Nothing in this Code section shall be construed so as to restrict the use of deadly force by employees of state and county correctional institutions, jails, and other places of lawful confinement or by peace officers of any agency in the State of Georgia when reasonably necessary to prevent escapes or apprehend escapees from such institutions.~~

~~(d) No law enforcement agency of this state or of any political subdivision of this state shall adopt or promulgate any rule, regulation, or policy which prohibits a peace officer from using that degree of force to apprehend a suspected felon which is allowed by the statutory and case law of this state.~~

~~(e)~~(b) Each peace officer shall be provided with a copy of this Code section. Training regarding elder abuse, abuse of vulnerable adults, and the requirements of this Code section should be offered as part of at least one in-service training program each year conducted by or on behalf of each law enforcement department and agency in this state.

~~(f)~~(c) A nuclear power facility security officer, including a contract security officer, employed by a federally licensed nuclear power facility or licensee thereof for the purpose of securing that facility shall have the authority to:

(1) Threaten or use force against another in defense of a federally licensed nuclear power facility and the persons therein as provided for under Code Sections 16-3-21 and 16-3-23;

(2) Search any person on the premises of the nuclear power facility or the properties adjacent to the facility if the facility is under imminent threat or danger pursuant to a written agreement entered into with the local enforcement agency having jurisdiction over the facility for the purpose of determining if such person possesses unauthorized weapons, explosives, or other similarly prohibited material; provided, however, that if such person objects to any search, he or she shall be detained as provided in paragraph (3) of this subsection or shall be required to immediately vacate the premises. Any person

refusing to submit to a search and refusing to vacate the premises of a facility upon the request of a security officer as provided for in this Code section shall be guilty of a misdemeanor; and

(3) In accordance with a nuclear security plan approved by the United States Nuclear Regulatory Commission or other federal agency authorized to regulate nuclear facility security, detain any person located on the premises of a nuclear power facility or on the properties adjacent thereto if the facility is under imminent threat or danger pursuant to a written agreement entered into with the local law enforcement agency having jurisdiction over the facility, where there is reasonable suspicion to believe that such person poses a threat to the security of the nuclear power facility, regardless of whether such prohibited act occurred in the officer's presence. In the event of such detention, the law enforcement agency having jurisdiction over the facility shall be immediately contacted. The detention shall not exceed the amount of time reasonably necessary to allow for law enforcement officers to arrive at the facility."

SECTION 4-2.

Said article is further amended by adding new Code sections to read as follows:

"17-4-20.3.

(a) As used in this Code section, the term 'peace officer' shall have the same meaning as provided for under Code Section 35-1A-1.

(b) Every peace officer, in carrying out his or her duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.

(c) When physical force is used, peace officers shall:

(1) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

(2) Use only a degree of force consistent with the minimization of injury to others;

(3) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and

(4) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(d)(1) As used in this subsection, the term ‘chokehold’ means a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes, but is not limited to, any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air.

(2) A peace officer who is appointed or employed in conformity with Chapter 8 of Title 35 shall be prohibited from using a chokehold upon any person in the performance of his or her official duties.

(e) Peace officers shall be justified in using deadly physical force to make an arrest only when all other means of apprehension are impractical given the circumstances and:

(1) The arrest is for a felony involving conduct that includes the use or threatened use of deadly physical force;

(2) There is substantial risk that the person to be arrested will cause death or serious bodily injury if his or her apprehension is delayed; and

(3) The force employed does not create a substantial risk of injury to innocent persons.

(f) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to

do so would unduly place sheriffs or peace officers at risk of injury, would create a risk of death or injury to other persons, or would be clearly inappropriate or ineffective under the circumstances.

(g) The defenses under Article 2 of Chapter 3 of Title 16 shall apply to any person who is subject to use of force by a peace officer that is not in conformity with this Code section.

17-4-20.4.

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

(1) 'Law enforcement agency' shall have the same meaning as provided for under Code Section 35-1A-1.

(2) 'Peace officer' shall have the same meaning as provided for under Code Section 35-1A-1.

(b) A peace officer shall intervene to prevent or stop another peace officer from using physical force that exceeds the degree of force permitted, if any, pursuant to Code Section 17-4-20.3, in pursuance of official duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control, without regard for chain of command.

(c)(1) A peace officer shall report the intervention to his or her immediate supervisor.

(2) At a minimum, the report required by this subsection shall include the date, time, and place of the occurrence; the identity, if known, and description of the participants; and a description of the intervention actions taken. Such report shall be made in writing within ten days of the occurrence of the use of such force and shall be appended to all other reports of the incident.

(d) No member of a law enforcement agency shall discipline or retaliate in any way against a peace officer for intervening as required by Code section, for

reporting unconstitutional or unlawful conduct, or for failing to follow what the officer reasonably believes is an unconstitutional directive.

(e) In addition to any criminal liability or penalty under the law, when a court, administrative law judge, or internal investigation finds that a peace officer failed to intervene as required by this Code section in an incident resulting in serious bodily injury or death to any person, the law enforcement agency employing the peace officer shall subject the peace officer to discipline, up to and including termination, and notwithstanding any other provision of law, the Georgia Peace Officer Standards and Training Council shall permanently decertify the sheriff or peace officer upon receipt of notice of the sheriff's or peace officer's discipline. The peace officer may only be recertified if found not guilty by a court of law.”

PART V SECTION 5-1.

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

SPONSOR'S RATIONALE

Representative Sandra Scott (“Representative Scott”) filed House Bill 18, as a part of a criminal justice reform legislative package, to address the “need [for] real criminal justice reform in Georgia.”⁵ Representative Scott believes that “[i]n the wake of the killing[s] of. . . Black Americans, . . . [t]he need for this legislation is paramount.”⁶ Cited as the Police Accountability Act, House Bill 18 is a community derived bill that seeks to address several areas of police conduct, specifically when police officers interact with the communities they serve.⁷ Broadly, House Bill 18 seeks to incorporate specific procedures to be followed by law enforcement when interacting with members of the community, in addition to requiring the use of body-worn cameras

⁵ Betsy Theroux, *Rep. Sandra Scott Introduces Criminal Justice Reform Package to Address Constituents' Concerns*, GEORGIA HOUSE OF REPRESENTATIVES MEDIA SERVICES OFFICE (Apr. 14, 2021), <https://house-press.com/Rep-Sandra-Scott-Introduces-Criminal-Justice-Reform-Package-to-Address-Constituents-Concerns/#more-9651>.

⁶ *Id.*

⁷ Doug Richards, *Police Reform Bills Greet Georgia Lawmakers*, 11 ALIVE (Jan. 11, 2021), <https://www.11alive.com/article/news/politics/Police-reform-bills/85-febcbff3-59a6-4bfc-979a-bf9ca9fb3e9d>.

and revising the use of force standards currently in place.⁸ “I filed [this] legislation [to] address[] no-knock warrants, chokeholds,” said Scott, “things... that everyone knows is a problem.”⁹

House Bill 18 focuses heavily on two areas that have been at the center of the national police reform conversation: (1) police misconduct and (2) transparency about the consequences of such misconduct by requiring the use of body-worn cameras by officers.¹⁰ In addition, House Bill 18 modifies the use of force provisions, another area identified as a necessary component of any effort aimed at reform, and creates a statewide reporting database for use of force incidents and changes to the use of deadly force authorization.¹¹

Currently, law enforcement officers in Georgia are authorized to use deadly force¹² and are not required to wear body cameras.¹³ In recent years, Georgia has seen a surge in officer-involved shooting fatalities, with fatality rates more than tripling from 2014 to 2018,¹⁴ and an increase in officer-related shootings and deaths since 2018.¹⁵

As it relates to a statewide reporting database for use of force incidents, and to a lesser extent use of force authorization and emphasis on community policing, House Bill 18 finds some support from the Peace Officers’ Association of Georgia

⁸ H.B. 18 Status Sheet, *supra* note 2.

⁹ Maya T. Prabhu, *After 2020 Protests, Georgia Legislators Take Divergent Approaches to Policing*, THE ATLANTA JOURNAL-CONSTITUTION (Apr. 28, 2021), <https://www.ajc.com/politics/After-2020-protests-Georgia-legislators-take-divergent-approaches-to-policing/NWXH5735TVHEZCET67XW6ONMAM/>.

¹⁰ David A. Harris, *Why Police Violence Against Black People Persists—and What Can Be Done About It*, FORTUNE (June 30, 2020), <https://fortune.com/2020/06/30/police-violence-brutality-black-racism/>.

¹¹ *Id.*

¹² O.C.G.A. § 17-4-20.

¹³ *Body-Worn Camera Laws Database*, NATIONAL CONFERENCE OF STATE LEGISLATURES, (Apr. 30, 2021), <https://www.ncsl.org/research/civil-and-criminal-justice/Body-Worn-Cameras-interactive-graphic.aspx#/>.

¹⁴ Ryan Kruger, *2018 Marks Deadliest Year for Shootings Involving Police in Georgia*, 11 ALIVE, (Dec. 26, 2018, 10:38 PM), <https://www.11alive.com/article/news/crime/2018-Marks-Deadliest-Year-for-Shootings-Involving-Police-in-Georgia/85-e28713f4-9a60-4425-9e14-157056ae625a> In 2014, there were 14 deaths resulting from 47 officer-related shooting incidents. *Id.* In 2018, there were 48 deaths resulting from 92 officer-related shooting incidents. *Id.*

¹⁵ *2020 Officer Involved Shootings*, GEORGIA BUREAU OF INVESTIGATION, (Dec. 31, 2020), <https://gbi.georgia.gov/news/2020-12-31/2020-Officer-Involved-Shootings> (according to statistics from the Georgia Bureau of Investigation, there has been a continued increase in officer-related shooting incidents and deaths resulting from those incidents since 2018. *Id.* In 2020, there were 44 deaths resulting from 96 officer-related shooting incidents. *Id.*); *see 2021 Officer Involved Shootings*, GEORGIA BUREAU OF INVESTIGATION, (Dec. 28, 2021), <https://gbi.georgia.gov/news/2021-10-05/2021-Officer-Involved-Shootings> (in 2021, there were 55 deaths resulting from 100 officer-related shooting incidents. *Id.*); *see also 2022 Officer Involved Shootings* GEORGIA BUREAU OF INVESTIGATION, 2022 OFFICER INVOLVED SHOOTINGS (Mar. 16, 2022), <https://gbi.georgia.gov/news/2022-02-24/2022-Officer-Involved-Shootings> (so far in 2022, there have been 7 deaths resulting from 19 officer-related shooting incidents. *Id.*); *see also 1,027 People Have Been Shot and Killed by Police in the Past Year*, WASHINGTON POST (Feb. 23, 2022), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (since 2015, 260 people have been shot and killed by police in Georgia).

(“POAG”).¹⁶ In an Executive Summary on the “Use of Force” in Georgia, POAG enumerated several policy statements and recommendations to help “law enforcement agencies meet current challenges concerning peace officers’ use of force.”¹⁷ Specifically, the report highlights the need for the centralized collection of data and information and calls on the state to “provide a central collection site with a mandatory reporting protocol for the incidents of officer involved shootings.”¹⁸ While the report does not treat officer interactions with Black communities in particular as a critical issue, it does place some emphasis on the importance of community policing and building trust within communities of color.¹⁹

House Bill 18 also finds support from the International Association of Chiefs of Police (“IACP”) in addressing use of force levels.²⁰ The 2020 revision to the National Consensus Policy and Discussion Paper on Use of Force (“Paper”) places emphasis on the value and preservation of human life in outlining what “should be the foremost policy of all law enforcement agencies.”²¹ This, in turn, allows for more effective policing and reducing the “potential [for] civil and criminal consequences in state or federal courts or both.”²² Similar to House Bill 18, IACP’s Paper creates guidelines on when any use of force should be avoided, as well as when the use of deadly force should be prohibited.²³ Although the Paper does not call for a complete ban on the use of chokeholds, it specifically addresses the need to adjust use of force levels by reasonably reassessing each individual encounter in which some level of force has been initiated.²⁴ “In situations where the subject either ceases to resist or the incident has been effectively brought under control, the use of physical force should be reduced accordingly.”²⁵ This aligns with precedent set by the Georgia Supreme Court.²⁶ The Paper also “requires

¹⁶ *Use of Force in Georgia: Executive Summary*, THE PEACE OFFICERS’ ASSOCIATION OF GEORGIA (Jan. 27, 2017), https://www.gapost.org/pdf_file/use_of_force_in_georgia_poag.pdf.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 25.

¹⁹ *Id.* at 29.

²⁰ *National Consensus Policy and Discussion Paper on Use of Force*, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (July 2020), https://www.theiacp.org/sites/default/files/2020-07/National_Consensus_Policy_On_Use_Of_Force%2007102020%20v3.pdf [hereinafter IACP].

²¹ *Id.* at 8.

²² *Id.*

²³ *Id.* The Paper also discusses the relationship between the use of verbal commands and a subsequent use of force. *Id.* Specifically, the report establishes that there must be a reasonable time given for one to comply with a command. *Id.* An officer cannot simply issue a command for the sake of doing so and, then, immediately engage in some use of force. *Id.* Reasonable time to comply must accompany any verbal command before resorting to any use of force. *Id.* at 12.

²⁴ *Id.* at 11.

²⁵ *Id.*

²⁶ *Mullis v. State*, 27 S.E.2d 91, 98 (Ga. 1943) (The Georgia Supreme Court has ruled that “[e]ven though an officer may have a legal right to make an arrest, still he can use no more force than is reasonably necessary under the circumstances, and cannot use unnecessary violence disproportionate to the resistance offered.”); *see also* *Byrd v. Cavanaugh*, 604 S.E.2d 655, 658 (Ga. App. 2004) (where, citing *Mullis*, the Court of Appeals noted “that Georgia law authorizes an arresting officer to use no more force

officers to provide medical care to anyone who is visibly injured, complains of injury, or requests medical attention.”²⁷

The death of George Floyd in Minnesota resulting from an excessive use of force encounter with police officers, the reaction of nearly seventy percent of the nation’s largest police departments, including the Atlanta Police Department,²⁸ and nearly half of all states enacting bans on the use of chokeholds²⁹ has caused Georgia lawmakers to scrutinize “[p]olice training and tactics like chokeholds, no-knock warrants and rubber bullets for crowd control.”³⁰ The problematic nature of law enforcement’s response to the protests following the death of George Floyd (that included shooting rubber bullets at protestors, discharging pepper spray and tear gas into crowds, and violent physical arrests) further revealed the issues surrounding officer misconduct and prompted measures to curb the use of these tactics.³¹

There has also been legislation filed in the Georgia General Assembly that would penalize protesters and offer protection to responding officers in certain instances.³² Representative Scott believes that such legislation aimed at “put[ting] people in jail for upholding peace and asking police to stop killing people...[is] going the total opposite way” and that measures addressing accountability and alternative training and engagement techniques are, arguably, more effective.³³

OPPOSITION’S RATIONALE

To date, there has been no movement on House Bill 18 in the Georgia Assembly.³⁴ While there has been no direct opposition to House Bill 18, certain

than is reasonably necessary under the circumstances to effect the arrest.” *Id.* In *Byrd*, the plaintiff sustained a broken arm in the course of her arrest by the officer after surrendering (with her knees on the ground and hands up above her head). *Id.* at 657. Once handcuffed, the officer then pulled her to her feet by yanking the handcuffs with enough force to break her arm. *Id.* The Court of Appeals concluded that the “use of force powerful enough to break Byrd’s arm after she was handcuffed and on her knees was [not] reasonably necessary in making her arrest.” *Id.* at 658.).

²⁷ IACP, *supra* note 20, at 12.

²⁸ Kimberly Kindy, Kevin Schaul & Ted Mellnik, *Half of the Nation’s Largest Police Departments Have Banned or Limited Neck Restraints Since June*, WASHINGTON POST (Sep. 6, 2020), <https://www.washingtonpost.com/graphics/2020/national/police-use-of-force-chokehold-carotid-ban/>.

²⁹ Farnoush Amiri, *George Floyd Killing Prompts Some States to Limit or Ban Chokeholds*, NATION WORLD (May 23, 2021, 5:23 PM), <https://www.wkyc.com/article/news/nation-world/George-Floyd-Chokehold-Bans/507-3cdf238f-8909-4594-b717-f07eae636e18>.

³⁰ Beau Evans, *Lethal Force, Chokeholds by Police to Face Scrutiny in Georgia Senate Review Group*, CAPITOL BEAT NEWS SERVICE (Aug. 14, 2020, 2:21 PM), <https://www.savannahnow.com/story/news/politics/2020/08/14/Lethal-force-chokeholds-by-police-to-face-scrutiny-in-Georgia-Senate-review-group/114838888/>.

³¹ See Michael D. White, Henry F. Fradella & Michaela Flippin, *Article: How We Can Achieve Accountability in Policing? The (Not-So-secret) Ingredients to Effective Police Reform*, 25 LEWIS & CLARK L. REV. 405, 407-09 (2021).

³² Prabhu, *supra* note 9.

³³ *Id.*

³⁴ H.B. 18 Status Sheet, *supra* note 2.

measures signal the reluctance of the Republican majority to sign on in support.³⁵ One of those measures, referenced by Representative Scott as counter-intuitive, proposed to increase the penalties for people who commit crimes during protests.³⁶ In addition, legislation that would have required the state to provide motorist education on “best practices” when interacting with law enforcement, the opposite effect of what House Bill 18 seeks to do, passed the Georgia House but, even though it made it to the Senate floor, failed to muster enough support to pass in the upper chamber.³⁷

There is also some opposition to body-worn cameras as a policy focus by groups like ACLU-Washington.³⁸ A review of studies on the effect of the use of body-worn cameras by police officers has shown no significant decrease in use of force incidents and no increase in accountability for the officers involved.³⁹ On the contrary, the studies show that footage from body-worn cameras have been used overwhelmingly to prosecute civilians and bystanders.⁴⁰ The call is against an increased investment in law enforcement offices to provide body-worn cameras and to redirect those funds to support community-based initiatives and programs.⁴¹

IMPLICATIONS IN GEORGIA

House Bill 18 will place Georgia close to the forefront of the national issue of police reform to address the excessive use of force in American policing.⁴² Specifically, House Bill 18 implements several principles and strategies identified as essential to the pursuit of police accountability to achieve effective reform, highlighted most recently by a “series of high-profile killings of citizens.”⁴³ Georgians may also realize the effects of community policing that acknowledges the persistent undercurrent of racial injustice in policing, embracing legitimacy and adopting procedural justice, focusing on organizational change, transparency, and creating robust data systems.⁴⁴

As a central part of House Bill 18, it is unclear what actual changes Georgia can expect from the implementation of body cameras specifically, as body camera mandates

³⁵ See generally Jill Nolan and Stanley Dunlap, *Police Funding Bill Passes as Other Contentious Criminal Justice Bills Falter*, GEORGIA RECORDER (Apr. 1, 2021), <https://georgiarecorder.com/2021/04/01/Police-funding-bill-passes-as-other-contentious-criminal-justice-bills-falter/>.

³⁶ *Id.*

³⁷ Mark Niesse & Maya T. Prabhu, *Georgia Senate Rejects Bill Teaching Drivers How to Interact With Police*, ATLANTA JOURNAL CONSTITUTION, (Apr. 1, 2021), <https://www.heraldmillmedia.com/story/news/2021/04/01/Georgia-Senate-rejects-bill-teaching-drivers-how-to-interact-with-police/43734035/>.

³⁸ Jennifer Lee, *Will Body Cameras Help End Police Violence*, ACLU-WASHINGTON, (June 7, 2021), <https://www.aclu-wa.org/story/Will-body-cameras-help-end-police-violence>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² White, *supra* note 31.

⁴³ *Id.*

⁴⁴ *Id.*

across the nation are fairly new and studies so far have not shown any indication that they will have the effect that most people hoped they would.⁴⁵ Authors of a study published by George Mason University's Center for Evidence-Based Crime Policy "noted that studies have found mixed results on body cameras leading to reductions in use of force by police – one of the primary reasons supporters pushed for the cameras."⁴⁶ Requiring the use of body cameras may, however, work as a part of a larger change in the culture of policing and law enforcement organizations by facilitating the formulation of standards for officer accountability.⁴⁷

In comparing Georgia to other states that have implemented many of the changes to policing proposed in House Bill 18, including Florida,⁴⁸ Arkansas,⁴⁹ and Texas,⁵⁰ there may be a decline in use of force incidents and an increase in legal actions brought against officers for non-compliance of protocols when involved in use of force incidents.⁵¹

LEGISLATIVE GENEALOGY

House Bill 18 was introduced in the House hopper on February 2, 2021.⁵² It had its first reading in the House on February 3, 2021.⁵³ The House second readers took place on February 4, 2021.⁵⁴ It has not been assigned to any committees.⁵⁵

Prepared by: *Chauncey Graham*

⁴⁵ Lindsey Van Ness, *Body Cameras May Not Be the Easy Answer Everyone Was Looking For*, PEW CHARITABLE TRUSTS, (Jan. 14 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/01/14/Body-Cameras-May-Not-Be-the-Easy-Answer-Everyone-Was-Looking-For>.

⁴⁶ *Id.*

⁴⁷ Allison Sherry, *It's Early, But Colorado's Police Reform Efforts Have Already Resulted In Charges For Officers*, CPR NEWS, (Aug. 3, 2021), <https://www.cpr.org/2021/08/03/Its-Early-But-Colorados-Police-Reform-Efforts-Have-Already-Resulted-In-Charges-For-Officers/>.

⁴⁸ Ryan Dailey, *Senate Moves Quickly on Policing Bill Requiring New Training Standards*; *FLORIDA LEGAL REVIEW*, MIAMI DAILY BUSINESS REVIEW, Apr. 29, 2021, at A3.

⁴⁹ Brett Rains, *New Law Requires Arkansas Police to Train Yearly on Duty to Intervene*, 40/29 NEWS, (Apr. 22, 2021), <https://www.4029tv.com/article/arkansas-police-officers-must-train-yearly-on-stopping-excessive-force-by-another-officer/36203883>.

⁵⁰ Chuck Lindell, *Texas Senate Passes 2 Police Accountability Bills Inspired by the Death of George Floyd*,

AUSTIN AMERICAN-STATESMAN, (Apr. 22, 2021), <https://www.statesman.com/story/news/2021/04/22/Texas-senate-passes-police-accountability-bills-inspired-George-Floyds-death/7336295002/>.

⁵¹ Sherry, *supra* note 47.

⁵² H.B. 18 Status Sheet, *supra* note 2.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*