

# SEEKING THE BELOVED COMMUNITY:

## Fostering Crucial Conversations about Race, Law Enforcement and the Law



“Our ultimate end must be the creation of the beloved community.”

– Dr. Martin Luther King, Jr.



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Dear Reader:

In late 2014, Georgia Appleseed was asked to take on an important task; one that would require sensitivity and understanding to achieve its intended goals.

*The task?* To facilitate healthy and candid dialogue, among members of the local community and local law enforcement, about the issues that had led to protests around the country following the deaths of unarmed black men and women during several highly publicized police encounters.

*The goals?* To promote positive interactions between police and those they guard and protect. To prevent tragedy. To increase justice.

After careful planning and consultation among Georgia Appleseed's Board of Directors and staff, and the acknowledgement that the request would require collaboration among many partners to reach its goals, Georgia Appleseed decided to take on the task, not only in one community, but also in communities across the state.

With that decision, Georgia Appleseed's ***Race, Law Enforcement & The Law Project*** was launched in March 2015.

This project follows Georgia Appleseed's three-phase methodology, by which we **(1) investigate, (2) disseminate, and (3) advocate**. In Phase 1, we engaged with our pro bono partners in research and fact finding to "investigate" and understand the legal issues at hand. In Phase 2, we now "disseminate" our findings and recommendations through the publication of this report and statewide community conversations. In Phase 3, we will "advocate" for systemic change at the state and local level that will increase justice in Georgia through law and policy reform.

Georgia Appleseed is known for its

- **commitment for the long-term**, demonstrated in the seven-year JUSTGeorgia project that contributed to the unanimous passage of Georgia's new juvenile code in 2013,
- **creative collaboration**, evidenced by the partners it recruited to create the statewide "out-of-school suspension rate" database, enhanced in 2014 with disaggregated data, designed for use by parents and school leaders to dismantle the school to prison pipeline, and
- **resourcefulness**, utilized to complete its massive real property tax database research project that "made the case" for establishing in 2015 the state's first law center devoted to the legal needs of low and moderate income owners of heirs property.

More than anything else, however, Georgia Appleseed is known for **its ability to marshal the pro bono time and talents of hundreds of lawyers and other professionals** for any given project. For Phase 1 of this project, we turned to two important partners: **Nelson Mullins Riley and Scarborough LLP** and the **Atlanta Bar Association**. Through the help of the Nelson Mullins law firm and the Atlanta Bar, more than 180 attorneys and other members of the legal community responded to the call for assistance and volunteered to handle the extensive legal research and/or to interview stakeholders statewide. Georgia Appleseed is grateful to the many members of the Atlanta legal community who donated their time to be of service in this statewide effort.

This foundation of exceptional legal work, supported by expert data analysis, and guided by an experienced staff, has enabled Georgia Appleseed to publish this report: ***SEEKING THE BELOVED COMMUNITY: Crucial Conversations about Race, Law Enforcement & The Law.***

Now in Phase 2, Georgia Appleseed and its statewide and local partners will convene community meetings guided by trained facilitators who will encourage "crucial conversations" about race, law enforcement and the law. During these meetings, we will share the findings and preliminary recommendations for change found in this report. We will continue to solicit input from all participants, listening to many different opinions, all the while seeking to identify the "common ground" that leads to practical, systemic solutions to be implemented at both the state and local levels. The recommendations for systemic change found in this report are and will be evolving throughout this process. Our overriding concern, towards which all these efforts are focused, is the need for protection and safety of the public **and** of law enforcement personnel.

During Phase 3, Georgia Appleseed will work collaboratively with willing partners to advocate for the recommendations identified in this report and further refined through the community meetings, with the objective of increasing justice for all in our state.

This is a bold objective that Georgia Appleseed is confident can be achieved if all of us resolve, no matter our opinions, experiences or beliefs, to listen for our shared call for justice and recognize our common desire for the ***Beloved Community***.

Sincerely,



*Teddy Reese*  
Project Leader



*Bob Gallagher*  
Board Chair (2015)



*Sharon Hill*  
Executive Director



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# SEEKING THE BELOVED COMMUNITY:

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### Preface

All Georgians should live in communities that are safe and where we engage each other with the highest level of mutual dignity, respect and responsibility without regard to race or ethnicity. The recent highly publicized incidents of police encounters with citizens—most often men and women of color—in Ferguson, North Charleston, Baltimore, Waller County, Texas, and in several Georgia communities (and the unrest that often followed) set the stage for crucial conversations and collaborative action. This action must be designed to assure that such tragedies are avoided to the fullest extent possible and that, if they do occur, the ensuing investigation and charging decision process is fair.

“But what can we do?” This is a question that has plagued many concerned citizens over the last several months. In the Spring of 2015, the Georgia Appleseed Center for Law & Justice (“Georgia Appleseed”) began a process designed to start to answer this question by seeking the views of community members throughout Georgia—law enforcement personnel, prosecutors, defense lawyers, representatives of neighborhood associations, faith leaders, political leaders, advocates and others—to help in assessing the nature of police-community relations in our state and to seek recommendations for changes to law as well as policies and practices that could improve or enhance them.

This process commenced by engaging in research to identify and assess critical issues to be addressed based upon recommendations made by law enforcement community relations experts from around the country. These issues encompassed two broad areas of concern. First, what changes to law or policy would most likely improve law enforcement community relations in ways that would significantly reduce the likelihood of future encounters resulting in death or severe bodily harm to community members? Second, what law or policy reforms may be necessary to assure that investigations and criminal charging decisions triggered by any such future incidents are fair and also are perceived to be fair by the community?

This report summarizes Georgia Appleseed’s research findings and the views of a diverse group of Georgians on these issues. In addition, the report contains recommendations for specific potential law and policy reforms.

Georgia Appleseed brings to this effort a firm commitment to objective, data driven assessment, a deep respect for the extraordinarily difficult, important and oftentimes dangerous service that law enforcement personnel provide to our society and an abiding belief that all of Georgia’s citizens must be afforded the rights to which they are entitled under the federal and state constitutions.

## Introduction & Key Definitions

In Part I of this report, we outline the process used to identify the critical issues that became the starting point for research and analysis as well as for the development of the detailed questionnaires used to explore these issues with community stakeholders. Part II summarizes our research on the current state of law, policy and practice in Georgia pertinent to several of the identified key issues. This extensive effort reflects a key tenet of the Georgia Appleseed “Theory of Change,”<sup>1</sup> i.e., that any effort to evaluate needed social justice reform must begin with a full understanding of current law. Based on our critical issues identification process and our law and policy review, Part II also suggests a number of “crucial questions” concerning potential changes in law or policy.

The viewpoints of community stakeholders from around Georgia on the current state of law enforcement community relations in the state and on the ways that law or policy reform could enhance these relations were collected through an extensive personal interview process conducted over four months and at a stakeholder forum held in Macon, Georgia, on October 28, 2015. These viewpoints are summarized in Part III.

In Part IV we propose a number of assessments of or revisions to law or policy designed (a) to reduce the likelihood of future incidents of concern at the community level and (b) to assure that law enforcement investigations and the criminal charging decisions made following any such future incidents are fair.

Finally, we would like to give detail about the terminology used in this report and its scope. When we refer to “critical encounters” or “incidents of concern,” we mean situations in which the use of physical force by a law enforcement officer has resulted in death or serious bodily harm to a member of the community. The physical force may involve the use of a firearm, the use of a nonlethal instrument, or the use of other means of physical restraint including during prisoner transport. These are the types of incidents that have triggered the current need for crucial conversations and actions. The use of such force may be justified. It may not be. The resulting death or serious bodily harm, however, is always tragic—for the deceased or severely injured man or woman, for the officer and for their families and communities.

The reader should also understand that we are profoundly aware of the extraordinary risk of death or serious bodily injury to which law enforcement officers are exposed every day as they seek to preserve public safety in our communities. This bravery must also be recognized and officer safety must be a benchmark as we engage in the crucial conversations suggested below.

## I. Critical Issues Identification

Much has been written about the necessary elements of effective policing and how best to build positive trusting relationships among law enforcement personnel and the members of the communities they serve. A comprehensive assessment of this highly complex subject is well beyond the scope of this initiative. Rather we have attempted to identify a limited number of critical issue areas that have the potential of triggering crucial conversations among diverse segments of the Georgia community and that could lead to concrete near term action steps for law or policy reform.

In identifying these critical issues, we were particularly influenced by very recent analyses carried out in direct response to the Ferguson, Missouri, incident and several other highly publicized events that followed shortly thereafter. For example, the United States Department of Justice carried out a comprehensive investigation of the Ferguson Police Department and issued a report in March of 2015 which included a number of recommendations for changes in policies and practices.<sup>2</sup> More recently, the Ferguson Commission, an independent body appointed by the Governor of Missouri, issued a detailed report and call to action.<sup>3</sup>

In December, 2014, President Obama created the Task Force on 21<sup>st</sup> Century Policing “[i]n light of recent events that have exposed rifts in the relationships between local police and the communities they protect and serve ... .”<sup>4</sup> The Task Force held multiple listening sessions throughout the country and heard from over 100 individuals from a wide variety of stakeholder groups. The Task Force issued an interim report in March 2015<sup>5</sup> and a final version in May<sup>6</sup> making dozens of recommendations including the creation of a National Crime and Justice Task Force.

Our review of these materials reaffirmed the complexities associated with addressing this challenge in a comprehensive manner but also allowed us to identify important areas of law and policy that could serve as starting points for crafting at least some near term reforms in Georgia.

### A. Law Enforcement Community Relations

We first seek to identify potential changes in law or policy that would improve law enforcement community relations in ways that would significantly reduce the likelihood of future encounters resulting in death or severe bodily harm to community members. To that end, we have focused our research and our outreach to stakeholders on this “preventive” goal in four key areas.

#### 1. Key Policies

It is important that law enforcement agencies have clear and comprehensive policies on matters that involve direct engagement with the public.<sup>7</sup> We examine the extent to which policies in place in Georgia address (a) use of deadly force, (b) stop, search and arrest and (c) engagement with vulnerable populations such as youth, persons with mental illness and the developmentally disabled.

#### 2. Training

The Task Force on 21<sup>st</sup> Century Policing noted: “As our nation becomes more pluralistic and the scope of law enforcement’s responsibilities expand, the need for expanded and more effective training has become critical.”<sup>8</sup> Critical areas for training include: “... implicit bias and cultural responsiveness, policing in a democratic society, procedural justice, and effective social interaction and tactical skills.”<sup>9</sup> We evaluate the current training requirements for Georgia police officers to see how they address these critical new areas of concern.



### **3. Data Collection & Transparency**

It is often said that you measure what you care about and you care about what you measure. Public policy should, whenever possible, be developed and assessed based on comprehensive, accurate data.<sup>10</sup> We explore the extent to which law enforcement agencies in Georgia collect and make available to the public demographic data on all stops, frisks, searches, service of summons, and arrests, including but not limited to those resulting in death or severe bodily harm. Community members from around the country have expressed concerns that these types of encounters disproportionately impact community members of color. It is important that data be collected to assess the extent to which such disparate impacts are occurring and to assess the effectiveness of any corrective measures that may be employed to address these concerns. We also examine whether law enforcement agencies make publicly available data concerning the demographic composition of their departments.

### **4. Community Engagement & Outreach**

The Task Force asserted that law enforcement culture “... should embrace a guardian—rather than a warrior—mindset to build trust and legitimacy both within agencies and with the public.”<sup>11</sup> Community engagement and outreach are key elements in such an approach to policing. We examine the extent to which police departments in Georgia seek to engage community members. We also consider whether effective mechanisms are in place to address citizen complaints concerning police activities.

## **B. Responding to Critical Encounters**

Our second main area of inquiry focuses on law enforcement reaction to future incidents of concern. We ask: what law or policy reforms may be necessary to assure that investigations and criminal charging decisions triggered by violent police encounters with community members are fair and also are perceived to be fair by the community?

### **1. Investigation Responsibility**

First, we examine the current law and practice in Georgia with regard to the investigation of an incident of concern. Then we ask whether there should be any change in current law or policy to avoid any appearance of conflict of interest arising out of a law enforcement agency participating in an investigation of the actions of one of its officers.

### **2. Making the Charging Decision**

Similarly we examine the criminal charging decision-making process in Georgia that occurs following the completion of an investigation. We evaluate current law and practice and ask whether any changes are in order to avoid potential conflict of interest concerns when a district attorney makes the decision whether or not to seek an indictment against a police officer who is employed by a department with which the district attorney works regularly. We also examine the grand jury participation rights afforded peace officers<sup>12</sup> in Georgia.



## II. Current Georgia Practices, Policies and Laws

### A. Law Enforcement Community Relations

#### 1. Key Policies

##### a) Use of Deadly Force

#### *Legal Setting*

To answer the question of whether the use of deadly force by a law enforcement officer is justified under Georgia law<sup>13</sup> requires an understanding of three key statutory provisions. The first pertains to use of deadly force by law enforcement officers when conducting an arrest of a person suspected of committing a felony.

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.<sup>14</sup>

This statute would thus appear to list three different circumstances when the use of deadly force by an officer seeking to arrest a person suspected of having committed a felony is authorized:

1. When the officer reasonably believes that the suspect possesses a deadly weapon;
2. When there is probable cause to believe that the suspect has committed or has threatened a crime of violence or
3. When the officer reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others.<sup>15</sup>

Note that two of these circumstances would arguably authorize the use of deadly force without regard to the officer's reasonable belief that the suspect posed an immediate threat to the officer or others. In other words, the law seems to allow, with regard to a suspected "felon," the use of deadly force based upon (a) the possession of a deadly weapon even if there is no threatened use of the weapon or (b) a prior actual or threatened crime of violence.

The second pertinent state law is the "self-defense" statute which applies to both police officers and civilian members of the community.<sup>16</sup>

A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.<sup>17</sup>

Thus, a police officer (like any other citizen) is allowed to use deadly force if the officer reasonably believes that the use of such force is necessary to defend the officer or others from death or great bodily injury or to prevent the commission of a forcible felony. This provision would particularly come into play if the use of deadly force did not arise out of an effort to apprehend a suspected felon.

The final pertinent statutory provision is Code Section 16-3-24.2 which provides:

A person who uses threats or force in accordance with Code Section 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24 shall be immune from criminal prosecution therefor unless in the use of deadly force, such person utilizes a weapon the carrying or possession of which is unlawful by such person under Part 2 of Article 4 of Chapter 11 of this title.

The Supreme Court of Georgia has interpreted this law in the context of the shooting of an alleged burglar by an Atlanta Police Department officer in 2002.<sup>18</sup> The court concluded that this statutory grant of immunity means that, rather than being limited to asserting a self-defense claim at trial, the accused had the right to seek a pretrial determination from the presiding judge that the use of deadly force was justified under the self-defense statute discussed above.<sup>19</sup> If the accused demonstrates that the use of deadly force was justified “by a preponderance of the evidence,” then the case must be dismissed before trial.<sup>20</sup>

## ***Department Operating Procedures***

### **1. Standards and Sample Policies**

For two decades, the Georgia Association of Chiefs of Police (“GACP”) has administered the “Georgia Law Enforcement Certification Program.” This is a voluntary program that resulted from extensive collaboration among GACP, the Georgia Sheriffs Association, the Georgia Department of Community Affairs, the Georgia Peace Officer Standards and Training Council, the Georgia Municipal Association, the Association of County Commissioners of Georgia, and the Georgia Police Accreditation Coalition.<sup>21</sup>

The Agency Certification Program of the GACP has identified standards that are felt to be essential to the efficient and effective operation of law enforcement agencies. Participating agencies are expected to implement all applicable standards. Some standards do not apply to all agencies, and waivers may be obtained in exceptional circumstances. The standards provide a detailed blueprint for professional enforcement. They are credible, realistic, flexible and effective.

The standards incorporate contemporary professional thought and practices in the State, and will insure the goal of increasing the effectiveness and efficiency of Georgia law enforcement agencies.<sup>22</sup>

The standards required for certification are included in a detailed Standards Manual.<sup>23</sup>

Departments seeking certification make application to the GAPC and then provide documentation that existing policies or any necessary new policies comport with the required certification standards. When the applicant believes that it is compliant, GAPC assessors visit the jurisdiction to verify that it qualifies for certification. If the assessment team finds the applicant agency compliant, then certification is issued by the Joint Review Committee and is valid for three years.<sup>24</sup> One hundred twenty (120) Georgia law enforcement agencies currently are certified under this program.<sup>25</sup>

To assist departments in the effort to develop operating procedures that fully address the required certification standards, GAPC has published a Sample Policy Manual.<sup>26</sup> The required Standards and the Sample Policy Manual contain a number of provisions addressing the key issues of concern discussed in this report.<sup>27</sup> In this section, we review those provisions relating to the use of deadly force.

Both the Standards Manual and the Sample Policy Manual outline detailed use of force provisions. Copies of the pertinent section of these documents are included in Appendix A-1. In particular, Standard 1.11 states, in part:

The agency shall have a written directive stating that an officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in immediate danger of serious physical injury.<sup>28</sup>

The Commentary to this Standard says that the intent of the provision is “to establish a clear-cut agency policy on the use of deadly force that is consistent with state law (17-4-20(d))<sup>29</sup> ...” and “to prevent unnecessary loss of life.”<sup>30</sup>

The Sample Policy on the use of deadly force suggested by GACP reads:

Law enforcement officers are authorized to use deadly force to:

1. Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury;
2. Prevent the commission of a forcible felony; or
3. Prevent the escape of a violent fleeing felon, if such force is necessary, to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others.

***Officers should keep in mind that facts unknown to an officer, no matter how compelling, cannot be considered in later investigations of whether the use of lawful force, particularly that of deadly force, was justified.***

Once the officer has determined that the use of deadly force is necessary; the Department's policy is to shoot to stop. An officer shall not discharge a weapon to kill, but rather to stop and incapacitate an assailant from completing a potentially deadly act as described in this policy. For maximum stopping effectiveness and minimal danger to innocent bystanders, the officer should shoot at “center body mass.”

No distinction shall be made relative to the age of the intended target of deadly force. Self-defense and imminent threat to self or others shall be the only policy guideline for employing deadly force.<sup>31</sup>

This policy statement arguably represents a more narrow interpretation of the scope of deadly force authority under Code Section 17-4-20(b) than the literal reading of the statute discussed above.<sup>32</sup>

## 2. Individual Department Operating Procedures

Many police departments in Georgia have detailed written standard operating procedures (“SOPs”) including use of force provisions. Generally, these SOPs are not readily accessible through Department maintained websites and must be obtained by formal or informal information requests.

Based on a review of a very limited sample of Georgia law enforcement agency use of force SOPs, it appears that at least some department policies seek to limit the use of deadly force to circumstances that are more narrow than arguably established by the statutory framework discussed above. This is likely the reason for the following caveat found in the DeKalb County Police Department SOP:

This policy is for departmental use only and does not apply in any criminal or civil proceeding. The departmental policy shall not be construed as a creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will form the basis for departmental administrative sanctions only. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.<sup>33</sup>

The SOP includes the following statement of policy: “The value of human life is immeasurable. One of the department’s core value statements is the preservation of life. Officers must use every means available of non-lethal force, prior to utilizing deadly force.”<sup>34</sup>

Likely in connection with the broad statutory authority outlined in code Section 17-4-20(b) discussed above, the DeKalb SOP states: “It will be the policy of this Department **NOT to use deadly force in order to prevent the escape of a fleeing felon, unless that suspect continues to pose an immediate danger or serious threat to innocent persons.**”<sup>35</sup> Several other provisions in the DeKalb SOP emphasize that deadly force should only be used as a last resort.

The Griffin Police Department SOP manual states:

While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or could clearly have been ineffective under the particular circumstances.”<sup>36</sup>

Under such circumstances, “officers are permitted to use whatever force that is reasonable and necessary to protect others or themselves from bodily harm and to effect lawful arrests.”<sup>37</sup>

The Griffin Police Department SOP also delineates limitations on use of lethal force.

Use of lethal force by an officer during the performance of duty is limited to situations where the officer reasonably believes it is necessary to defend his own life or the life of another or to prevent serious bodily injury to himself or another, and all other available means of defense have failed or would be inadequate or dangerous under the circumstances.<sup>38</sup>

Four criteria must be present to justify use of lethal force:

1. Ability or apparent ability – “officer must reasonably believe that the person against whom the deadly force is about to be applied has the capacity to cause death or serious bodily harm”;
2. Opportunity – “the officer must reasonably believe that the person is in a position (within officer-perceived effective range) to deliver and/or inflict death and/or serious bodily harm upon the officer, other officers, and/or third parties”;
3. Imminent Jeopardy (or manifest intent) – “the person must be acting in such a manner that the officer reasonably concludes that the person will exercise his/her ability to imminently inflict death or serious bodily harm upon the officer, other officers, or other third parties, and further, that it will happen straightaway, unless the person is stopped”;
4. Preclusion – “the officer must believe that deadly force is a reasonable option.”<sup>39</sup>

The Dunwoody Police Department also has adopted a comprehensive “Deadly & Non-Deadly Force” SOP.<sup>40</sup> Three “elements of deadly force” must be present before such force may be employed:

- a. Does the violator possess the ability or apparent ability to kill you or a third party or to cause you or a third party serious physical injury?
- b. Does the violator have the opportunity to kill you or a third party or to cause you or a third party serious injury?
- c. Has the violator placed you or a third party in imminent jeopardy?<sup>41</sup>

A police officer may only use a firearm to protect the officer or others “... from what is reasonably believed to be an immediate threat of death or serious physical injury.”<sup>42</sup>

The Athens-Clarke County Police Department’s extensive use of force directive includes the following statement:

Officers may use deadly force only when they reasonably believe that the action is in defense of human life, including their own life, or in defense of any person in immediate danger of serious physical injury or to effect the arrest of a suspect whom the officer has probable cause to believe has committed a crime involving the infliction or threatened infliction of serious harm if the officer reasonably believes that the suspect’s escape would create a continuing danger of serious physical harm to any person. (See also O.C.G.A. 16-3-21 and 17-4-20).<sup>43</sup>

#### **b) Community Member Detentions**

Incidents involving the use of deadly force by a law enforcement officer are typically preceded by an encounter in which a community member is detained—stopped, searched, or arrested—by the peace officer. In this section, we explore the extent to which police officers may lawfully detain and search individuals.

Our federal and state constitutions prohibit unreasonable governmental searches and seizures. The Georgia Constitution provision regarding searches and seizures tracks the language of the Fourth Amendment of the United States Constitution nearly verbatim, and it has been interpreted as providing essentially the same protections.<sup>44</sup>



A “seizure” of a person by a law enforcement officer “... occurs when, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.”<sup>45</sup> This general definition has been described as being composed of three “tiers”:

- (1) Consensual communications between police and citizens involving no coercion or detention, which, therefore, present no constitutional issue;
- (2) Brief seizures or “stops,” which must be based on “reasonable suspicion,” and
- (3) Arrests, which must be supported by “probable cause.”<sup>46</sup>

### ***Tier 1-Consensual Stops***

Entirely consensual police-citizen encounters require no level of suspicion on the part of the officer.<sup>47</sup>

In a first-tier encounter, police may approach citizens, ask for identification, ask for consent to search, and otherwise freely question the citizen without any basis or belief of criminal activity so long as the police do not detain the citizen or convey the message that the citizen may not leave. Thus, a citizen’s ability to walk away from or otherwise avoid a police officer is the touchstone of a first-tier encounter.<sup>48</sup>

“[A] command from a law enforcement officer, alone, is not sufficient to constitute a seizure for purposes of the Fourth Amendment. Rather, under the Fourth Amendment, a seizure occurs only when the officer, by means of physical force or show of authority,<sup>49</sup> has in some way restrained the liberty of a citizen.”<sup>50</sup>

### ***Tier 2-Nonconsensual Stops***

#### **1. Terry stops**

One type of Tier 2 seizure is a *Terry* stop, which is a brief detention of a person by a police officer where the police officer does not have probable cause to arrest but does have a reasonable suspicion, supported by articulable facts, that a person is involved in criminal activity.<sup>51</sup> The “... person may be stopped in order to identify him, to question him briefly, or to detain him briefly while attempting to obtain additional information.”<sup>52</sup>

The officer’s reasonable suspicion must be based on an “objective manifestation that [the person stopped] was either committing, or was about to commit, a crime.”<sup>53</sup> A mere refusal to cooperate with the police does not furnish the objective justification required for a stop.<sup>54</sup> Georgia state courts inquire further to determine whether, based on the totality of the circumstances, the detention was arbitrary or harassing.<sup>55</sup>

#### **2. Vehicle stops**

Another type of Tier 2 seizure is a traffic stop. “For the duration of a traffic stop . . . a police officer effectively seizes everyone in the vehicle, the driver and all passengers.”<sup>56</sup> Like *Terry* stops, vehicle stops must be supported by reasonable suspicion.<sup>57</sup> “[I]n a traffic-stop setting, the first *Terry* condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation.”<sup>58</sup> During a vehicle stop, the police may order passengers and the driver out of or into the vehicle pending completion of the stop.<sup>59</sup>

### 3. Detentions during warrant-supported search of premises

Other than *Terry* and vehicle stops, officers may also detain the occupants of the premises while conducting a search pursuant to a valid warrant.<sup>60</sup> These Fourth Amendment seizures have been held by the courts to be justified because they are deemed necessary to (a) protect officer safety, (b) facilitate orderly execution of the search, and (c) prevent flight risk.<sup>61</sup>

#### ***Tier 3-Arrests***

“[A]rrests may constitutionally be made only on probable cause.”<sup>62</sup>

An officer has probable cause to arrest a person when he has sufficient knowledge, based on reasonably trustworthy information, for a prudent person to believe that the suspect has committed or is committing an offense. A statement by a law enforcement officer based upon his personal observations is entitled to a presumption of reliability. . . . An informant’s tip may be given greater weight if it contains an explicit and detailed description of wrongdoing and states that the informant witnessed the crime.<sup>63</sup>

#### ***Detention Related Searches***

While we will not discuss in detail the right of citizens to be free from unreasonable governmental searches, we address briefly certain types of searches that may accompany the detention actions discussed above. In general these types of searches may be carried out without the law officer obtaining a judicially approved warrant.

##### **1. Searches incident to arrest**

Police may “search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime.”<sup>64</sup> “Indeed . . . warrantless searches incident to arrest occur with far greater frequency than searches conducted pursuant to a warrant.”<sup>65</sup>

The justifiable scope of a search incident to arrest is “... the arrestee’s person and ‘the area within his immediate control’—construing that phrase to mean the area from which he might gain possession of a weapon or destructible evidence.”<sup>66</sup> The scope of a search incident to arrest may under certain circumstances also include a vehicle of which the arrestee was recently an occupant.<sup>67</sup>

##### **2. “Frisk” pursuant to *Terry* or vehicle stops**

[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.<sup>68</sup>

“To justify a pat down of the driver or a passenger during a traffic stop ... just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.”<sup>69</sup> The scope of this “frisk” for weapons during a vehicle stop may include areas of the vehicle in which a weapon may be placed or hidden.<sup>70</sup>



## ***Department Operating Procedures***

### **1. Standards and Sample Policies**

The GACP Sample Policy Manual contains suggested policy statements addressing detentions<sup>71</sup> and warrantless searches.<sup>72</sup> Copies of the pertinent documents are included in Appendices A-2 and A-3. The sample policies appear to be consistent with applicable federal and state constitutional provisions.

### **2. Individual Department Operating Procedures**

DeKalb County Police Department SOP 4-5.9 (“Search and Seizure”) provides an outline of that department’s policy, which is intended to assure that its personnel “... conduct searches of persons, places and things pursuant to established State and Federal laws governing search warrants and/or warrantless searches.” A copy of the SOP is included in Appendix B-1. A similar SOP is in effect in Dunwoody (Appendix B-2).<sup>73</sup>

The Griffin Police Department adopts by reference the most recent edition of the Georgia Law Enforcement Handbook as the “procedural standard” for stop and frisk and search and seizure issues.<sup>74</sup> This resource contains a comprehensive analysis of the constitutional limits on detentions and on search and seizure. It should be noted that the referenced handbook is a commercial reference work which must be purchased unless it should be available through a public library.

#### **c) Vulnerable Population Encounters**

##### ***Scope of the Challenge***

The late 1950s saw the beginning of a major change in this country in the way we provide treatment to persons suffering from mental illness. The process of “deinstitutionalization” was intended to reduce the number of persons being treated in psychiatric hospitals in favor of what was considered to be more effective community-based options. Many critics argue that this decades-long effort has had significant unintended consequences.

The woeful failure to provide appropriate treatment and ongoing follow-up care for patients discharged from hospitals has sent many individuals with the severest forms of mental illness spinning through an endless revolving door of hospital admissions and readmissions, jails and public shelters. At any given time there are more individuals with schizophrenia who are homeless and living on the streets or incarcerated in jails and prisons than there are in hospitals.

Approximately 200,000 individuals with schizophrenia or bipolar disorder are homeless, constituting one-third of the estimated 600,000 homeless population. Nearly 300,000 individuals with schizophrenia or bipolar disorder, or 16 percent of the total inmate population, are in jails and prisons (“More Mentally Ill Persons Are in Jails and Prisons than Hospitals: A Survey of the States,” Treatment Advocacy Center and National Sheriffs’ Assn., May 2010).<sup>75</sup>

Law enforcement officers today thus often encounter individuals whose behaviours may be a manifestation of mental illness. Similarly, officers may encounter community members who are developmentally disabled or who are under the influence of alcohol or drugs. Finally, law enforcement personnel regularly interact with juvenile offenders. Many stakeholders believe that effective law enforcement management of individuals in these categories requires specially tailored techniques.

With regard to the mentally ill, developmentally disabled, or addicted populations, Georgia has made significant strides in developing “crisis intervention training” (“CIT”) as we discuss in more detail below at pages 18-19. Some departments also require officers who are assigned to police public schools (“school resource officers” or “SROs”) to have training that recognizes the delayed brain development and lack of judgment and self-control that characterizes the juvenile population. Such SRO training is not as widespread and consistent as that reflected in the CIT program. In addition, very often police engagement with youth occurs outside of the public school venue.

## ***Department Operating Procedures***

### **1. Standards and Sample Policies**

Again, the GACP Standards and Sample Policy manual each contain provisions addressing interaction with and management of members of vulnerable populations including people with mental illness, those under the influence of alcohol and drugs and children. Pertinent sample policies are included in Appendix A-4.

### **2. Individual Department Operating Procedures**

#### **a. Mental Health**

The DeKalb County Police Department has in place an SOP titled “Emergency Mental Cases.”<sup>76</sup> The SOP states: “One of the most difficult assignments is the call that involves a mentally ill person who is causing a disturbance, behaving in an abnormal manner or committing some infraction of the law.”<sup>77</sup> The SOP (Appendix B-3) discusses different options available to the officer and emphasizes the exercise of judgment and common sense.

Chapter 39 of the Griffin Police Department SOP addresses “Managing and Transporting of Mentally Ill Persons.” A complete copy of the SOP is included in Appendix B-4. The key policy directive encourages alternatives to arrest:

Officers and employees often encounter people in need of assistance or services that may be best provided by a public agency outside the criminal justice system or by social service agencies. In the event an officer encounters any person where an arrest is not authorized, or where an arrest may be authorized but resolution to the situation would be better served if an arrest is not made ..., the officer may refer, or when necessary, transport the person(s) to one of the facilities outlined in this chapter.<sup>78</sup>

The Dunwoody Police Department, effective as of September 1, 2015, has adopted an SOP for interacting with “Mentally Ill Persons” (Appendix B-5).<sup>79</sup> The stated department policy is to treat persons who may be mentally ill “in a safe and ethical manner.”<sup>80</sup> The policy contains an extensive listing of the types of behaviors that may be indicators of mental health challenges as well as Alzheimer’s disease indicators.<sup>81</sup> Procedures for seeking voluntary and involuntary committal in appropriate cases are also discussed.<sup>82</sup>

#### **b. Juveniles**

Chapter 23 of the Griffin Police Department SOP addresses “Juvenile Operations.” The keystone of the SOP is the policy commitment to the concept of “least coercive alternatives:”

It is the policy of this agency that when Officers are confronted with incidents involving juvenile offenders, they are to use the least coercive among reasonable alternatives, consistent with preserving public safety, order and individual liberty.<sup>83</sup>

Thus officers are given very broad discretion to divert children and youth when referral to juvenile court is inappropriate and other resources may more effectively be applied.<sup>84</sup> Referral to juvenile court intake is required for serious acts of delinquency including those that would be a felony if the offender were an adult and any act involving a weapon.<sup>85</sup>

The DeKalb County Police Department also has an SOP for “Handling the Juvenile Offender.”<sup>86</sup> This document reflects an arguably more stringent approach to juvenile offenders than that articulated by Griffin.

To protect the community and to reduce the incidents of delinquent acts, it will be the policy of the DeKalb County Police Department to identify, apprehend, arrest, and seek conviction of any juvenile that commits an act that, if committed by an adult, would constitute a criminal offense defined by the State of Georgia or ordinances of DeKalb County. Enforcement and prevention should be exercised with neither at the expense of the other.<sup>87</sup>

### **c. Crucial Questions**

Our review of the cited police department SOPs showed that, very often, such SOPs included written policies in the key identified areas of concern. Certainly the 120 agencies certified under the voluntary GACP program will have such policies and we expect many others do as well. The reviewed “use of force” policies urge restraint arguably beyond that mandated by state law. Policies on detentions and search and seizure mirror the constitutional limits developed by the courts. Policies related to vulnerable populations generally urge the use of discretion and good judgment in recognition of the special challenges faced by these groups.

The GACP certification program reflects a very positive effort to assure that police departments in Georgia maintain clear statements of policy in those areas of concern that are the focus of this report. Less than 20 percent of the eligible law enforcement agencies in Georgia, however, are certified under this voluntary program.<sup>88</sup> Are there ways to assure that all of the approximately seven hundred police agencies in Georgia are operating under clearly articulated standards and practices that reflect adherence to constitutional requirements and commitment to current professional best practices?

Our ability to review a much broader sampling of SOPs was hindered by the lack of ready access by the public to these documents. In addition, the SOPs are organized in a way that makes it difficult for someone unfamiliar with the document structure to navigate. Should police departments be required to make copies of their SOPs that do not relate solely to internal administrative matters more accessible to the public?

With specific regard to the issue of the use of deadly force, the reviewed sample policies and individual department SOPs urge substantial restraint and a “last resort” approach. Should the pertinent statutory provisions discussed above be amended in any way to conform the scope of a peace officer’s justifiable use of deadly force to this more restrained approach?

## **2. Training**

### **a) Basic and Annual Training**

The standards for employment, including required training, for Georgia law enforcement personnel are contained in the “Georgia Peace Officers Standards and Training Act.”<sup>89</sup> The responsibility for implementing these standards is vested in the Georgia Peace Officers Standards and Training Council (“Council”).<sup>90</sup> This law outlines the requirements for employment to include minimum age, education, physical health, mental health and good moral character standards.<sup>91</sup> Law enforcement job applicants must successfully complete a “job related academy entrance examination” to be developed and administered by the Council.<sup>92</sup>

In addition, the law provides that “... each and every candidate shall satisfactorily complete a basic training course prior to his or her appointment as a peace officer.”<sup>93</sup> The Council is empowered to establish the course requirements and the methods of instruction and to certify schools that are authorized to offer the training.<sup>94</sup>

In addition to the initial basic training course, most police officers are required to undergo 20 hours of additional training during each calendar year.<sup>95</sup> The controlling statute also notes that the employment eligibility standards and training it requires are only minimum standards. “[E]ach law enforcement unit is encouraged to prescribe such additional requirements as it deems necessary and appropriate.”<sup>96</sup> The Council is authorized to establish and recommend curricula for in-service training as well as advanced and specialized training courses.<sup>97</sup>

As noted above, the basic training courses are offered at various schools certified by the Council. One such school is the Georgia Public Safety Training Center. The basic course offered at the Center involves 408 hours of training over 11 weeks.<sup>98</sup> A summary of the course content is provided in Appendix C. The course includes a two-hour session on ethics and professionalism, 22 hours total on community relations, including two hours on community policing, and four hours on use of force.

### **b) Crisis Intervention Training**

Originally implemented in Georgia in late 2004, the Crisis Intervention Training (“CIT”) Program involves collaboration among entities such as the National Alliance for the Mentally Ill, the Georgia Department of Behavioral Health and Development Disabilities, Georgia Bureau of Investigation, Georgia Association of Chiefs of Police, Georgia Sheriff’s Association, Inc. and the Council. Its mission is to train police officers in assisting individuals who suffer from mental illness, co-occurring disorders, substance abuse, developmental disorders and other brain disorders who are in crisis.<sup>99</sup>

More specifically, the Georgia CIT Program aims to train a minimum of 20% of officers in every law enforcement agency in each of Georgia’s 159 counties with the appropriate skills necessary to (1) effectively and humanely respond to crises occurring in these populations of citizens, (2) minimize risks to the responding officer and to the person in crisis and (3) decrease the necessity of use of force in such crisis situations.<sup>100</sup>

The Council-approved CIT curriculum was developed by the CIT Advisory Board, which is comprised of individuals from state and local law enforcement agencies, the state mental health system and other mental health providers, hospitals, universities, consumer and family-based alliances, judges, attorneys, county mental health directors, advocates, consumers and other volunteers from both the public and private sector, in partnership with the Georgia Public Training Center.<sup>101</sup>

The 40-hour curriculum is a consecutive five-day training course involving both classroom and practical law enforcement training provided by mental health professionals, other content experts and trained CIT law enforcement instructors. The curriculum includes the following:

- classroom instruction regarding various mental illnesses, developmental disabilities, addictive diseases, child and adolescent intervention and cultural sensitivity;
- site visits to local emergency receiving facilities and inpatient psychiatric units; and
- performance based training, which includes the mastery of de-escalation techniques and crisis intervention skills through role-play scenarios.

Each CIT class accommodates 15 to 25 law enforcement officers. The curriculum includes 20 training modules, one of which involves 10 hours of both classroom and practical training on crisis intervention de-escalation techniques, particularly focusing on communication skills and using appropriate active listening techniques to identify behavior that should be avoided when attempting to de-escalate a crisis situation.<sup>102</sup>

A number of police departments in Georgia, particularly those serving our larger urban communities, are participating in the CIT Program.

### **c) Crucial Questions**

Does the law enforcement basic training curriculum in Georgia adequately address the critical issues of implicit bias and cultural responsiveness, policing in a democratic society, procedural justice and effective social interaction and tactical skills? Should Georgia law be amended to require the Council to modify the basic training and annual training requirements to address these issues more comprehensively?

## **3. Data Collection & Transparency**

### **a. No Current State Mandate**

Georgia law, as discussed below, requires the detailed collection and reporting of significant amounts of criminal justice data. Georgia law, however, does not mandate that law enforcement agencies collect and transparently report data with regard to police detention (stops, frisks, searches, arrests, etc.) of community members. Indeed, there is no requirement in Georgia for the consistent public reporting of even the most serious encounters. This conclusion was confirmed recently by investigative reporters from Atlanta-based media outlets who wrote: “No one tracks police shootings across Georgia and no agency can offer a comprehensive count statewide.”<sup>103</sup>

### **b. Federal Efforts**

National efforts to collect accurate data have largely been ineffective. For example, until 2014, the federal Bureau of Justice Statistics (“BJS”) maintained a program that collected data on arrest-related deaths on a state-by-state basis. Under this program that commenced in 2003, State Reporting Coordinators (SRCs) in all 50 states and the District of Columbia were responsible for identifying and reporting all eligible cases of arrest-related deaths to BJS.

Following the publication of its 2009 statistics, BJS conducted an assessment of the validity and reliability of the data.<sup>104</sup> The results of this assessment indicated that the program methodology did not capture all reportable deaths in the process of arrest. Therefore, BJS determined that the collected data did not meet BJS data quality standards, and in March 2014, BJS suspended data collection and publication of the data until further notice.

The assessment report noted that the data systems and support available to the SRCs from local law enforcement agencies (which were responsible for self-reporting any deaths) varied considerably from state to state. The report estimated that the data collection effort captured only between 36.43% and 48.73% of all arrest-related community member deaths.

A separate U.S. Department of Justice effort in 2013 to collect use of force statistics from local police agencies from around the country generated data that has been characterized as “almost useless.”<sup>105</sup>



### **c. Georgia Requirements**

Title 35, Chapter 3, Article 2 of the Georgia Code establishes the Georgia Crime Information Center (“GCIC”) within the Georgia Bureau of Investigation.<sup>106</sup> The primary function of the GCIC is to provide “... a system for the intrastate communication of vital information relating to crimes, criminals, and criminal activity.”<sup>107</sup>

GCIC administers the Georgia Uniform Crime Reporting (UCR) program that is part of a nationwide, cooperative effort administered by the Federal Bureau of Investigation. Georgia has voluntarily participated in this program since 1975.<sup>108</sup>

GCIC receives monthly crime and arrest reports from more than 600 state and local law enforcement agencies. These reports form the database from which periodic and special reports and analyses of criminal offenses and arrests are produced as needed. Because of their seriousness and frequency of occurrence, eight offenses have been chosen to comprise a Crime Index and serve as indicators of our Nation’s crime experience. These offenses are known as Part 1 offenses and include the following: murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft and arson. For these Part 1 offenses, Georgia law enforcement agencies report the number of offenses and associated crime data. However, all other offenses are classified as Part 2 offenses and only basic arrest data are reported.

The UCR Program collects data on the age, race and sex of persons arrested for all crimes except traffic violations. Special monthly reports are also collected for incidents of homicide, arson, juveniles arrested and law enforcement officers killed or assaulted.<sup>109</sup>

The GCIC focuses on the collection of information related primarily to arrests. Therefore it does not capture information concerning the other detention encounters discussed above. Furthermore, neither the GCIC nor any other state or local entity of which we are aware collects, compiles and disseminates factual information concerning critical encounters.

### **d. Utah Transparency Law**

At least one state has recently come to grips with the need to collect and assess data in connection with certain types of police-community encounters. In response to incidents of concern (as well as the death of a police officer) that had occurred during police raids of private residences or during the deployment of police SWAT or tactical teams, the Utah legislature in 2014 enacted a data collection and transparency provision.<sup>110</sup>

The Utah law requires any state, county, municipal or other law enforcement agency to report detailed information concerning reportable incidents on or before April 30 of each year.<sup>111</sup> “Reportable incidents” include the deployment of a tactical group or the service of a search warrant after a forcible entry.<sup>112</sup> The individual agency reports are to be submitted to the state Commission on Criminal and Juvenile Justice (“Commission”).<sup>113</sup> The Commission is required to compile the data and submit a report to various governmental entities prior to August 1 of each year.<sup>114</sup> In addition, the Commission must publish the report on the Utah Open Government website (open.utah.gov) before August 15 of each year.<sup>115</sup> The first report was issued by the Commission in August 2015<sup>116</sup>

### **e. NYPD Use of Force Data Collection Policy**

On October 1, 2015, the New York City Police Department (“NYPD”) announced a major new program for the collection of detailed data on all use of force encounters, not only those involving firearms. Reports will be required both when officers use force and when force is used against an officer.<sup>117</sup>

NYPD Commissioner William Bratton characterized the new requirement as reflecting “state-of-the-art policies” and suggested that it could serve as an example for other departments across the country on how to document, investigate and conduct training on the use of force.<sup>118</sup> When outlining the plan, NYPD Chief Kevin Ward said:

From now on, when we use force, we will document it, we will justify it and we will review it. Police have the power to remove somebody's liberty. Take them into custody. And, even more important to that, we have the power to not only defend the public, defend ourselves by using – sometimes deadly physical force. What comes with that is the ability and the responsibility to account for that and justify it.<sup>119</sup>

#### f. Crucial Questions

Current efforts to collect and disclose crime data discussed above, while important, arguably do not involve the collection of data at the level of detail that would allow for careful assessment of critical policing practices by law enforcement management or by the public. The existence of the GCIC data collection and reporting function, the implementation of the Utah transparency law and the recent NYPD use of force data collection expansion effort, however, indicate that it is may be feasible to manage a broader and more detailed data collection effort in Georgia.

Should Georgia law mandate that detailed data (including gender, race, or other pertinent demographic status of both the community member and the officer) for all police detention encounters with community members be collected and that such information shall be made available to the public? Should each law enforcement agency be required to report the details of any incident of concern to the GCIC so that such information can be compiled and reported at least annually?

We were unable to access, through public sources, information on the demographic diversity of Georgia's police departments. It is, of course, absolutely clear that the existence of a diverse police does not guarantee positive community trust and engagement.<sup>120</sup> A wide discrepancy between the police department's diversity and that of the community it serves, however, has the potential to generate mistrust.

Should police departments be required regularly to disclose publically the racial and gender demographics of the force?

### 4. Community Engagement & Outreach

Community outreach is widely seen as a key element in efforts to enhance the relationship between police and the citizen population they serve. Community policing and outreach is designed to prevent crime and eliminate the fearful atmosphere that crime creates.<sup>121</sup> Law enforcement officers generally try to become more familiar with the geographic area they patrol, as well as with the residents living in the area. The goal is to establish relationships from which to build trust between law enforcement and citizens. Ultimately, the greater the level of trust between law enforcement and citizens the more secure and safe an area and a community will be.<sup>122</sup>

We discuss below several positive examples of community policing and outreach efforts around the country and in Georgia. In addition we review the use of citizen review boards as a mechanism to assure that community members may effectively raise concerns about alleged police misconduct.

#### a) National Community Policing Movement

Law enforcement agencies throughout the United States have voluntarily adopted policies regarding community outreach. Often, training of law enforcement tends to focus primarily on the technical, strategic, or tactical components of serving as a police officer rather than also addressing consideration of the people-driven or service-oriented aspects of policing vital to community relations.<sup>123</sup> Both the Chicago Police Department and Oakland Police Department have sought to address this gap by providing officers with training in community relations.<sup>124</sup>



Chiefs in both departments have noted that this training often reminds officers of the reasons for which they sought to enter the police force, i.e., to help communities.<sup>125</sup> Additionally, the Oakland Police Department is involved in Operation Ceasefire, which is a city-led community effort “to reduce shootings and homicides through direct communication with those at highest risk of violence.”<sup>126</sup> Operation Ceasefire engages Oakland police with community leaders, organizers and ministers.<sup>127</sup>

The Las Vegas Police Department voluntarily requested assistance from the DOJ in reviewing how the Police Department’s use of force impacts communities.<sup>128</sup> Following analysis, the Las Vegas Police Department strengthened its reputation in minority communities by reducing the risk of force that is unnecessary or excessive and adopting a policy called “No Hands On,” which prohibits the officer who pursues a crime suspect from being the same officer to physically apprehend the suspect.<sup>129</sup>

In conjunction with the implementation of “No Hands On,” police officers received community-based training on treating people with respect and dignity as well as training in scenarios that had proven problematic for police and minority community relations in the past.<sup>130</sup> This program has positively impacted police relations with minority communities. Use of force incidents on the part of Las Vegas police went from 1,400 in 2005 to 842 in 2012 and 734 in 2013.<sup>131</sup>

Members of the police department in Richmond, California are required to undergo monthly training on non-violent ways to disarm suspects.<sup>132</sup> As a result, officer-involved shooting incidents have been reduced to less than one per year.<sup>133</sup>

Several police departments in Massachusetts, Indiana, North Carolina, and Wisconsin have taken training on adolescent brain development enabling officers to interact more effectively with minority teens in their respective communities.<sup>134</sup> Similarly, Connecticut has implemented complete crisis intervention training intended to deescalate conflict and build community relationships for all law enforcement.<sup>135</sup>

Perhaps one of the greatest success stories with respect to community outreach has occurred in New Haven, Connecticut, where approximately 26 percent of the population lives below the poverty line. New Haven has assigned more than one-third of its police officers in the evening shifts to walk their beat, rather than ride in a police car.<sup>136</sup> This type of community policing results in close and frequent contact with neighborhood residents and creates more trust between police officers and the people living in these communities. Since this change, the number of homicides, robberies, motor-vehicle thefts and serious crime has decreased by approximately thirty percent. The homicide rate in New Haven has decreased over the last year by 65 percent, and the occurrence of nonfatal shootings has decreased by more than 50 percent. One New Haven citizen commented that it was easier to talk to the police and that law enforcement no longer came into the neighborhood and viewed residents as “the enemy.”<sup>137</sup>

The idea of increased community interaction with law enforcement has received support from the U.S. Conference of Mayors, based on the idea that police develop enhanced credibility by interacting with the communities that they serve on a daily basis.<sup>138</sup> The success in New Haven could serve as a model for the rest of law enforcement agencies to implement community policing throughout the United States. Similar community policing initiatives are already scheduled to launch in cities throughout the United States, including: Birmingham, Alabama; Fort Worth, Texas; Gary, Indiana; Minneapolis, Minnesota; Pittsburgh, Pennsylvania and Stockton, California.<sup>139</sup>

## **b) Community Policing and Outreach in Georgia**

GACP Standard 6.8 states that all police departments should have a written directive that “requires all agency personnel to share responsibility for achieving the agency’s community relations and crime prevention objectives.”<sup>140</sup> The commentary to the Standard encourages grass roots support:

Law enforcement agencies should establish direct contacts with the community served. Without ‘grass roots’ community support, successful enforcement of many laws may be difficult, if not impossible. A well-organized community relation function can be an effective means of eliciting public support, can serve to identify problems in the making, and may foster cooperative efforts in resolving community issues. Input from the community can also help ensure that agency policies accurately reflect the needs of the community.<sup>141</sup>

Several police departments in Georgia report that they are engaging in community policing and other outreach efforts. The following are a few examples.

### ***Macon***

The Macon Police Department has increased community policing efforts, particularly in the downtown area. Specifically, the Macon Police Department has relocated its bike patrol to the city’s center.<sup>142</sup> The bike patrol has created a partnership between the Macon Police Department and local community. A local business helped secure and transform a former ice cream shop into the bike patrol’s office, complete with new art for the building. The relocation of the bike patrol created a community-friendly and inviting place where downtown residents and business owners can interact with law enforcement.<sup>143</sup>

### ***Atlanta***

The Atlanta Police Department has a Community Oriented Policing Section (“COPS”), which seeks to build partnerships between police and members of the community.<sup>144</sup> The Atlanta COPS program seeks to identify potential criminal activity and to improve the quality of life for Atlanta citizens. There are several different divisions within COPS. The Lesbian, Gay, Bisexual and Transgender Unit seeks to strengthen the relationship between the Atlanta Police Department and members of that community. The Crime Prevention Unit shares crime prevention tips with neighborhood residents, and offers training in the areas of crime prevention, neighborhood watch, senior citizen’s activities, safety and awareness as well as child identification programs to Atlanta citizens. Finally, the Atlanta Police Athletic League offers Atlanta girls and boys the opportunity to play sports with police officers, and provides homework assistance and summer camp activities to Atlanta youth as a way to build connection between these teens and the Atlanta Police Department. Each of these programs is designed to strengthen the relationship between the Atlanta Police Department and members of the community.

### ***Riverdale***

The City of Riverdale police department has also undertaken community policing initiatives aimed at specific groups within the city.<sup>145</sup> For example, a joint community and police “apartment coalition” meets with apartment managers to discuss crime and other concerns in apartment complexes. There is a Chief and Citizen Advisory Board, where citizens are able to meet with the Chief of Police to discuss their concerns. Additionally, the police department offers a ten-week Citizen Public Safety Academy with training provided to community members on gang and drug awareness, first aid, CPR and crime and fire prevention. Finally, the police department has developed a partnership by which youth engage in “interactive programming” about gang activity and are mentored by police.

## ***Henry County***

Henry County also has an active COPS unit.<sup>146</sup> The focus of the COPS initiative is to engage police and citizens to work together to identify and address crime in Henry County. Central to the partnership are efforts through which police officers partner with community members to offer relevant, crime prevention programming. The available courses include self-defense for women, a citizens police academy, the neighborhood watch program, robbery prevention tips, burglary prevention tips and elderly safety tips. Additionally, the members of the COPS unit and Henry County citizens partner together each year to sponsor the National Night Out event. This event focuses on crime and drug prevention awareness and generates financial support for anti-crime programs. This interaction allows important relationships to be forged between police officers and all members of the community.

## ***Johns Creek***

Johns Creek has actively sought to engage the community in its policing efforts. One such effort is through the Citizen Auxiliary Police Services (CAPS).<sup>147</sup> CAPS helps police direct traffic, patrol parks, conduct residential and business checks, manage administrative work and assist with community events. Additionally, the police department offers a nine-week citizen's police academy with classroom instruction and demonstrations aimed at preventing crime as well as teaching self-defense classes for women. The Johns Creek police department has created (1) the Police and Community Together (PACT) program that seeks to engage citizens and police in working together to prevent crime and report criminal incidents and (2) SHIELD, a business watch program that seeks to create a safer business community through education to local business people about crime prevention. Additional programs that engage the community include a teen safe driving program and an underage drinking division. Each of these community outreach programs is designed to strengthen the relationship between the Johns Creek police force and the citizens of Johns Creek.

### **c) Citizen Review Boards**

In addition to the various outreach efforts outlined above, jurisdictions around the country and in Georgia have established "citizen review boards" ("CRBs") as a means of providing a structured mechanism for consideration of complaints about alleged police misconduct.<sup>148</sup> There are significant variations in the structure, purpose and level of authority for CRBs, though most fall into one of four types (or some combination thereof):

(1) The CRB investigates allegations of police misconduct and makes recommendations for action to the chief law enforcement officer;

(2) Police officers investigate allegations and develop findings which then are reviewed by the CRB and form the basis for the CRB's recommendations for action to the chief law enforcement officer;

(3) Complainants appeal initial law enforcement findings to the CRB, which reviews the complaint and then makes independent recommendations to the chief law enforcement officer; or

(4) The CRB (usually through an independent auditor) investigates the process by which the law enforcement agency accepts and investigates complaints and reports on the thoroughness and fairness of the process to the department and the public.<sup>149</sup>

A few municipalities in Georgia have CRBs or similar entities or have had such organizations in the past that have been dissolved.

## *Atlanta*

The Atlanta Citizen Review Board (the “ACRB”) was established in 2007 by an Atlanta City Ordinance<sup>150</sup> and is composed of 11 members, one each appointed by the Mayor, the City Council, President of the Council, four different Neighborhood Planning Unit Groups, the Gate City and Atlanta Bar Associations, the League of Women Voters and the Atlanta Business League.<sup>151</sup> The ACRB investigates formal complaints filed by the public involving excessive force, serious bodily injury and death that are alleged to be a result of the actions of an Atlanta Police Department or Corrections Department employee, holds hearings to resolve such complaints, and makes recommendations to the Chief of Police and Corrections, the Mayor of Atlanta and the Atlanta City Council.<sup>152</sup>

After its staff completes an investigation, the ACRB may review the file or hold a hearing in order to establish findings and make recommendations.<sup>153</sup> If the ACRB holds a hearing, the complainant and involved officers may be asked to testify.<sup>154</sup> The ACRB’s vote is made publicly, and the complaints reviewed are posted on its website.<sup>155</sup>

The ACRB may then recommend general reforms (such as changes in training) or specific actions directed at individual officers, including punishment, demotion and firing.<sup>156</sup> Within 30 days of the submission of a recommendation for action, the chief of police or corrections will respond in writing regarding which recommendations are accepted, rejected or will be implemented with modifications, which response is also posted to ACRB’s website.<sup>157</sup> The chief of police is empowered to wholly reject the ACRB’s recommendation, but must provide in writing why the findings were rejected.<sup>158</sup>

## *Albany*

The Albany Police Department Civilian Review Board (“APDCRB”) was created by city ordinance to induce confidence in the citizens of Albany concerning the operation of the police officers employed by the city.<sup>159</sup> The APDCRB addresses police department policies, provides recommendations to the chief of police and reviews, upon request, citizen complaints against members of the city police department alleging abusive language, excessive force and harassment.

Procedurally, the APDCRB is a Type 3 CRB as described on the preceding page in that it reviews complaints that have already been handled by the police department, providing a second layer of accountability for members of the public. Complaints are to be mailed to the APDCRB within 30 days of the police department’s decision using a standard form.<sup>160</sup> After reviewing the complaint, the APDCRB may make one of the following recommendations to the chief of police: (1) ask the chief of police to forward the matter to the internal affairs division for further investigation; (2) recommend to the police chief that the actions of the police officer were appropriate under the circumstances at issue; or (3) recommend to the police chief that the actions of the police officer were not appropriate under the circumstances at issue. The chief of police retains ultimate decision-making authority, however, for any disciplinary action taken against members of the police department.<sup>161</sup>

Nine APDCRB members are appointed with staggered terms. APDCRB members are limited to three year terms and no member may be appointed more than twice. The mayor appoints three individuals. Each City Commissioner appoints one individual and the Police Chief appoints one advisory member.<sup>162</sup>

## *Augusta*

Augusta has no citizen review board currently in place. As early as the 1970s, however, Augusta had a Human Relations Commission (“HRC”), created after violence that resulted in the deaths and injuries of African-Americans in the Augusta community.<sup>163</sup> The HRC served as a forum for citizen complaints, but was dismantled in 2009 due to city budget cuts.<sup>164</sup> Calls for setting up a citizen review board have occurred several times in recent years – notably, in the 2012 Richmond County sheriff’s race – but no public steps have been taken to establish a board at this time.<sup>165</sup>



## ***Columbus***

Columbus has an eleven-member Public Safety Advisory Commission (“PSAC”), established in 2004,<sup>166</sup> that has the ability to recommend resources, public safety practices and policies and citizens’ responsibilities needed to achieve a safe community to the Mayor, Columbus Council and Public Safety Departments.<sup>167</sup> The Columbus Council appoints 10 members and the Mayor appoints one. The PSAC can review complaints and request (but not compel) police officers’ testimony; it can also send concerns to the City Council, which does have subpoena power. There have been some recent proposals by Columbus citizens to expand the powers of the PSAC.<sup>168</sup>

## ***Cobb County***

At the time this report was in preparation, a Cobb County Commissioner proposed the creation of a citizen review board following a personal encounter between her and local law enforcement.<sup>169</sup>

### **d) Crucial Questions**

Many law enforcement agencies in Georgia report that they are engaged in a variety of community policing and other community outreach initiatives. Should Georgia law mandate the use of community policing practices by all law enforcement agencies and establish criteria for the mandated programs? Alternatively should the General Assembly encourage the expanded use of community policing practices by providing budget support for training on and implementation of such programs?

A few Georgia jurisdictions have citizen review boards in place with varying responsibilities and authorities. Should Georgia law mandate that some or all jurisdictions create citizen review boards with criteria for the mandated programs?

## **B. Responding to Critical Encounters**

### **1) Investigation Responsibility**

When a police officer in the state of Georgia is alleged to have caused the serious bodily harm or death of a community member, several entities have the authority to investigate the incident. Such investigations may occur simultaneously or successively, and may implicate criminal violations or administrative violations. Police departments, district attorneys, the Georgia Bureau of Investigation and, under certain circumstances, the United States Department of Justice may investigate potential criminal violations. Police department internal affairs divisions and, in some cases, the Georgia Peace Officer Standards and Training Council investigate alleged violations of internal policies. (While administrative reviews are an important management function, we focus in this report on the criminal investigation processes.)

#### **a) Multiple Entities May Investigate an Incident**

There are several different entities that may conduct an investigation following an incident involving a shooting or serious bodily injury by a police officer. The investigations may occur simultaneously, as where a police department’s homicide unit and internal affairs division investigate a police officer. Investigations may also occur successively, such as where the United States Department of Justice investigates a potential violation of federal law after a police department investigation is completed.

## ***Police Departments***

The most common investigation of an incident involving infliction of serious body harm or death is carried out by the police department itself. While many police departments state that they have procedures for investigating police-involved incidents of death or serious injury, those procedures are typically not publicly available. For example, the DeKalb County Office of Internal Affairs states that these investigations are “immediate, objective, and thorough,” but does not provide any details.<sup>170</sup> It is our understanding that the fact that such an investigation has been initiated and the final outcome of such an investigation are generally made public, but that the procedures followed in such investigations are not normally publicly available.

## ***Georgia District Attorneys***

Each of Georgia’s 49 state judicial circuits has a district attorney who is the chief prosecuting officer for the district.<sup>171</sup> The district attorney’s role in the criminal charging decision-making process following an investigation is discussed in Part III.B.2 below. Some district attorney offices also have investigative capacity. For example, the DeKalb County District Attorney has an investigation unit within the office.<sup>172</sup> The Criminal Investigations Division investigates felony cases brought to the DeKalb District Attorney’s Office by law enforcement agencies, county citizens and private corporations.<sup>173</sup>

In addition, in 2000 the Fulton County District Attorney’s Office created the Public Integrity Unit, which handles sensitive and complex cases such as law enforcement-related incidents involving shootings and injuries to civilians.<sup>174</sup> Such incidents are automatically reviewed by the Public Integrity Unit, which is supervised by a Deputy District Attorney and is housed separately from the District Attorney’s Office.<sup>175</sup> The Public Integrity Unit reviews all officer-related shootings and deaths of individuals in police custody.<sup>176</sup>

## ***Georgia Bureau of Investigation***

The Georgia Bureau of Investigation (“GBI”) may be asked to investigate instances of excessive force,<sup>177</sup> but the request must come from a local government official, district attorney, sheriff, superior court judge, the governor of Georgia by directive, or a chief law enforcement officer.<sup>178</sup> Once GBI concludes its investigation, the information is turned over to the local district attorney.<sup>179</sup> GBI publishes press releases with information about its investigations (although it is unclear whether the agency publishes all requests for help and the results of investigations).<sup>180</sup>

## ***United States Department of Justice***

The United States Department of Justice may investigate an instance of alleged excessive use of force by a police officer to determine if a federal civil rights violation has occurred. The pertinent federal statute provides as follows: “Whoever, under color of any law ... willfully subjects any person ... to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States [shall be guilty of a crime].”<sup>181</sup> The United States Supreme Court has interpreted this law to mean that arrestees have a constitutional right to be free from an “objectively unreasonable” use of force.<sup>182</sup> Put another way, federal courts have consistently held that the use of deadly force is justified if the officer had reasonable cause to believe that the suspect presented a threat of death or serious bodily harm to the officer or others.<sup>183</sup>

The United States Department of Justice (“DOJ”) through its Civil Rights Division also investigates alleged “patterns or practices” of police misconduct such as excessive use of force by police officers.<sup>184</sup> Complaints may be generated within DOJ and from without by individuals who allege federal civil rights violations.<sup>185</sup> The use of excessive force cannot be an isolated incident. It must be part of a “pattern or practice” such that the law enforcement agency in question has an unlawful policy or the incidents constituted a pattern of unlawful conduct.<sup>186</sup>

## **b) A Crucial Question**

Substantial concerns have been raised about the propriety of the practice of a police department investigating alleged excessive force claims against one of its members.<sup>187</sup> In the recent past, departments have voluntarily elected to ask a separate department or the GBI to take over or supplement the investigation.<sup>188</sup>

Should Georgia law mandate that an independent investigating entity be in charge of investigating every case in Georgia in which a community member is killed or suffers serious bodily injury as a result of an encounter with the police?

## **2) Making the Charging Decision**

Under Georgia law, following completion of the law enforcement investigation of the facts and circumstances related to a potential crime, the power to make the decision to seek criminal charges against an individual is generally vested in the district attorney in the jurisdiction where the incident occurred. The district attorney is afforded broad “prosecutorial discretion” in making this decision.<sup>189</sup> Except in extraordinary cases, the courts will not override a decision by a district attorney to forego prosecution.<sup>190</sup>

If the district attorney decides to prosecute, then a criminal case will be initiated by either the filing of an “accusation” with the appropriate court or by seeking an “indictment” by a grand jury.<sup>191</sup> Since felony charges involving violence require a grand jury indictment, the discussion below focuses on grand jury proceedings.<sup>192</sup>

### **a) Grand Jury Proceedings-General**

A detailed discussion of the selection and organization of the grand jury and of its various functions is beyond the scope of this report. The Prosecuting Attorneys’ Council of Georgia has produced a very helpful Grand Jury Handbook (2015)<sup>193</sup> if the reader is interested in learning more.

In summary, the presiding judge of the Superior Court will impanel 16 to 23 persons (and up to three alternates) to serve on the grand jury for the full term of the court. One of the primary functions of the grand jury is to consider criminal indictments or special presentments from the prosecuting attorney.

The District Attorney (or an assistant) will start the proceedings by reading or explaining the proposed indictment to the grand jury and by informing the panel of the evidence that will be presented. The District Attorney will then call witnesses. Typically the only witnesses called will be the investigating law enforcement officers. These officers are allowed to testify as to statements made to them by third parties including the accused and to report on the results of laboratory tests made as part of the investigation. Such “hearsay” evidence would not be admissible in the actual trial of the accused but may be considered and credited by the grand jury. Following the district attorney’s questioning of a witness, members of the grand jury are allowed to ask questions.

At the close of the testimony, the district attorney will leave the room so that the grand jury may deliberate privately. The issue before the grand jury is not the guilt or innocence of the accused but whether the district attorney has presented sufficient evidence to establish “probable cause” that the accused has committed the alleged crime. At least 16 members of the grand jury must deliberate. If at least 12 members agree that probable cause has been established, then the proposed indictment document will be marked “true bill” and returned in open court before the Superior Court judge so that the prosecution can proceed. If less than 12 jurors believe that probable cause has been proven, the proposed indictment document is marked “no bill.”



## b) Grand Jury Proceedings – As to Peace Officers

Most persons accused of a crime in Georgia do not have the right to be present at or to give testimony in grand jury proceedings. That is not the case for peace officers.

Georgia Code Section 17-7-52 provides as follows:

Before an indictment against a present or former peace officer charging the office with a crime which is alleged to have occurred while he or she was in performance of his or her duties is returned by a grand jury, the officer shall be notified of the contemplated action by the district attorney of the county wherein the grand jury shall convene and the officer shall be afforded the rights provided in Code Section 45-11-4.

- (a) The requirements of subsection (a) of this Code section shall apply to all prosecutions, whether for misdemeanors or felonies, and no such prosecution shall proceed either in state or superior court without a grand jury indictment.

Thus, a grand jury indictment is required before a peace officer in Georgia can be prosecuted for an alleged crime committed in the performance of duty, even if the alleged crime is a misdemeanor. The peace officer must be provided advance notice of the proposed presentment of the case.

In addition, the reference to Code Section 45-11-4 in subsection (a) quoted above grants to peace officers certain grand jury participatory rights:

The accused shall have the right to appear before the grand jury to make such sworn statement as he or she shall desire at the conclusion of the presentation of the state's evidence. The accused shall not be subject to examination, either direct or cross, and shall not have the right individually or through his or her counsel to examine the state's witnesses. The accused and his or her counsel shall have the right to be present during the presentation of all evidence and alleged statements of the accused on the proposed indictment, presentment or accusation, after which the accused and his or her counsel shall retire instantaneously from the grand jury room to permit the grand jury to deliberate upon the indictment.<sup>194</sup>

### ***Section 45-11-4—Background and Judicial Interpretation***

The additional rights listed in Code Section 45-11-4 were initially established in the 1800's in legislation that prohibited malpractice in office by certain elected officials. The early history of this law was reviewed by the Georgia Court of Appeals in *Dyer v. State*.<sup>195</sup> The court noted that the law accorded certain public officials "... a right not accorded to citizens in general ...."<sup>196</sup> The *Dyer* case involved members of the board of commissioners of roads and revenues for Hall County who were accused of malpractice in office. According to the court, these sworn elected officials were granted the right to explain their conduct to the grand jury.

... so that, if the case was one without foundation, they should not be annoyed by being required to defend, and (what is more important) should not be injured in the public estimation, or their public efficiency be impaired while resting on a baseless charge.<sup>197</sup>

This provision has been addressed in a number of court decisions all of which have concluded that the General Assembly's decision to grant special grand jury rights to certain public officials had a rational basis and, therefore, did not violate the constitutional guarantees of equal protection or due process. In 1966, the United States Court of Appeals for the Fifth Circuit began its analysis by commenting:

This is a case of first impression if only for the reason that Georgia appears to be the only state in the nation which accords to public officials charged with malfeasance in office the right of appearance before the grand jury. Indeed, the almost universal rule is that no one, public official notwithstanding, charged with a crime has the right to appear before the grand jury.<sup>198</sup>

Nevertheless, the federal court noted the rationale for the law outlined by the *Dyer* decision quoted above.<sup>199</sup>

The dual dangers that the grand jury will be influenced by extra-legal, political considerations to return an unfounded indictment against a public official and that such indictment will cause disrespect of the public office are legitimate concerns of the State, providing a rational basis on which it could provide special protection from unfounded malfeasance in office charges or indictments of its commissioned officials, county judges, justices of the peace, and county commissioners.<sup>200</sup>

The reasoning of the Fifth Circuit was adopted by the Supreme Court of Georgia nearly two decades later when it rejected a constitutional attack on this law (and Section 17-7-52) in *Lewis v. State*.<sup>201</sup>

### ***Section 17-7-52—Background and Judicial Interpretation***

The law granting Georgia peace officers certain rights in connection with grand jury proceedings was first considered in 1974. We have not been able to determine whether the proposal was triggered in response to any particular event or series of events. It appears, however, that consideration of the provision was triggered at least in part by advocacy by the Peace Officers Association of Georgia ("POAG"). In the spring of 1974, the then President of POAG discussed the proposed legislation in a column titled "Our concerns in the Legislature."<sup>202</sup> In discussing grand jury participatory rights for peace officers, he stated:

This will give peace officers a right to present their side of the story for consideration. Since the peace officer is in a rather restricted position and holds a position of tremendous responsibility, the likelihood of harassment concerning his actions is increased. It is felt that this legislation will give the police officer a more equal chance to defend himself from frivolous and false accusation.<sup>203</sup>

Later in the year, another POAG officer reported that the bill (HB 1741) had been passed in the General Assembly but had been vetoed by then Governor Jimmy Carter.<sup>204</sup>

POAG renewed its advocacy efforts in late 1974 with an eye toward the 1975 session of the General Assembly. "We will again introduce legislation which will permit an officer who has been accused of any wrongdoing in the line of duty to have the right to appear before a Grand Jury if an indictment is being sought."<sup>205</sup> Later POAG reported: "Governor Busbee has assured us that if this bill passes the House and Senate,<sup>206</sup> he will sign it into law."

At POAG's 74<sup>th</sup> Annual Convention, the delegates adopted the following resolution:

WHEREAS, on many occasions a peace officer is often subjected to the possibility of being indicted for false arrest or for assault and battery, and for any number of other crimes which it is alleged he has committed while in the performance of his duty; and

WHEREAS, in almost every instance those attempted indictments are without foundation in fact but are nevertheless a source of constant harassment to peace officers; and

WHEREAS, in most instances a criminal is attempting to 'get back' at the peace officer, and unfortunately, the peace officer's side of the story is not heard by the grand jury.

NOW, THEREFORE, BE IT RESOLVED BY THE PEACE OFFICERS ASSOCIATION OF GEORGIA that the Association hereby goes on record as supporting legislation guaranteeing the peace officer the right to appear before the grand jury in the above type cases.<sup>207</sup>

The law was passed by the General Assembly and signed into law in 1975.

Georgia courts have addressed this law on a number of occasions. In 1979, the Court of Appeals stated: "It is obvious that [this code provision] was intended to afford police officers the same procedural protection afforded to other public officials as to accusations arising from the performance or nonperformance of their official duties."<sup>208</sup>

As noted above, the Supreme Court of Georgia upheld the constitutionality of Section 17-7-52 in the *Lewis v. State* decision in 1985. The court reiterated this holding in 2001 in *Williams v. State*.<sup>209</sup> Also in 2001, the state Supreme Court interpreted the law to make it clear that the statutory grand jury rights were available to peace officers charged with misdeeds while in office even if the officer was no longer employed as a peace officer when criminal proceedings were commenced.<sup>210</sup> The court noted the following:

Finally, the State complains that giving peace officers rights not afforded to the average citizen is manifestly unfair, and that an officer who is charged with committing a criminal misdeed in the performance of duty and who is later terminated or resigns should not as a matter of public policy be afforded the protections of OCGA § 17-7-52. But the General Assembly has seen fit to do so. And such complaints ignore the fact that police officers perform in situations outside the realm of the average citizen, and they, like other individuals charged with criminal misdeeds, are presumed innocent until proven guilty.<sup>211</sup>

The most recent high court discussion of Section 17-7-52 is found in the 2010 opinion in *State v. Smith*.<sup>212</sup> In this case, the court determined that the notice of indictment given to a police officer was inadequate in that it did not with specificity include the date, time and location of the expected grand jury proceedings. The court discussed the underlying purposes of both Sections 17-7-52 and 45-11-4:

OCGA § 45-11-4 furthers the legitimate State interest of protecting certain government officials, vested with the authority to exercise discretion, against possible frivolous indictments pursued by persons aggrieved by the exercise of that discretion; the legislative rationale is that if these officials do not have such protection, their reputation and performance of their duties could be compromised while they are defending baseless charges. \*\*\* And it is plain, that by enacting OCGA § 17-7-52, the General Assembly intended to afford peace officers the enhanced protections given to other public officials regarding accusations arising from the performance or nonperformance of their official duties. \*\*\* Thus, the legitimate purpose of OCGA § 17-7-52, in conjunction with OCGA § 45-11-4, is to protect peace officers from harassing or frivolous charges before the grand jury.<sup>213</sup>

### c) Crucial Questions

District attorneys have very broad discretion to decide whether to seek criminal grand jury indictments. Some have questioned whether district attorneys should retain this discretion when assessing alleged acts of excessive force involving a member of a law enforcement agency with whom the district attorney works closely. Some fear that the need to maintain effective relationships with the local police force may limit the district attorney's willingness to seek an indictment. Others argue that the district attorney, an elected official, may be overly influenced by community demands that criminal charges be pursued.

Should Georgia law mandate that an independent special prosecutor be appointed to manage any case in which a community member is killed or suffers serious bodily injury as a result of an encounter with a member of a law enforcement agency serving the prosecutor's jurisdiction?

The courts have consistently held that the laws establishing participatory grand jury rights for peace officers are constitutional. Our jurisprudence teaches that legislatures are granted very wide latitude in granting differing rights and privileges to different groups of people as long as (a) there is some rational basis for the classification, (b) the differentiating factor does not involve a "suspect classification" such as race, ethnicity or national origin and (c) the statutory framework does not impair a fundamental right.

Irrespective of the statute's constitutionality, is it necessary or wise? Should Code Section 17-7-52 be retained, revised or repealed?<sup>1</sup>

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<sup>1</sup> Shortly before this report was issued, the Prosecuting Attorneys' Council of Georgia announced support for legislation that would amend Code Section 17-7-52 to provide for the opportunity to cross examine a peace officer who testifies before the grand jury and to limit the officer's attendance at the hearing to the time during which the officer is testifying. See B. Schrade, "Police grand jury targeted," *Atlanta Journal-Constitution*, A-1 (October 17, 2015), available at <http://tablet.olivesoftware.com/Olive/Tablet/AtlantaJournalConstitution/SharedArticle.aspx?href=AJC%2F2015%2F10%2F17&id=Ar00100>.

### III. Community Stakeholder Viewpoints

In Part III of the report we summarize the information, ideas and opinions concerning the current state of community/law enforcement relations in Georgia obtained in interviews of 140 Georgia citizens (hereinafter identified as “stakeholders”), conducted by attorneys from several law firms between June 2015 and September 2015.

We began the interview process by identifying stakeholders who could bring diverse perspectives to the issues being reviewed. Georgia Appleseed invited over 500 individuals from across the state to participate as interviewees. The stakeholders were identified through contact with community and business leaders, faith based groups, law enforcement groups, attorneys, elected officials, universities and by recommendations made by other stakeholders. Stakeholders were sent a letter explaining the purpose of the project and requesting an interview (Appendix D).

Law firms donated the time of their lawyers, paralegals and other administrative staff members to conduct the interviews. These volunteers were assigned to follow up on the invitations, to schedule and to conduct the interviews.

Georgia Appleseed created questionnaires to be used in the stakeholder interviews. Those questionnaires were reviewed by a survey professional to ensure that the questions were clearly written and were as free of bias as possible. (See Questionnaire Forms, Appendix E.) Questionnaires were tailored somewhat to various types of potential stakeholders: General Public, Elected Officials, Law Enforcement Personnel and Prosecuting Attorneys. Use of the questionnaires in the interview process promoted consistency in the interview process and allowed responses to be input into a searchable database.

For the purposes of this portion of the report, stakeholder responses for the **General Public Group** and the **Law Enforcement Group** are generally discussed separately for each topic.

The **General Public Group** was made up of elected officials, lawyers (including the defense bar), as well as members of Georgia’s business, nonprofit, faith based and educational organizations. There were almost an equal number of men and women in this group. Of the General Public Group, the racial demographics were:

- 50% African American
- 40% Caucasian
- 10% Other minorities

The geographic demographics were:

- 60% in Metro Atlanta counties
- 40% other locations in Georgia

The **Law Enforcement Group** consisted of currently employed law enforcement officers and administrators, law enforcement association representatives and current or former prosecuting attorneys. Eighty-five percent of the stakeholders in the Law Enforcement Group were male, one third of these responders were African American and two thirds were Caucasian. Approximately two thirds of the members of this group were located in Metro Atlanta while the others worked in various locations throughout Georgia.

The great majority of interviews were conducted in person, with a few interviews performed by telephone to accommodate stakeholders’ schedules. The stakeholders were informed that their interviews would remain confidential and anonymous, and that no response given by them would be attributed to them by name in the final report. The interviews were conducted, in virtually all cases, by a team of two: an attorney questioner and a non-attorney note taker. The interviewers gathering the data for this project were trained on the interview process in advance of conducting interviews, and made every effort to record the information they received exactly as they received it.



Stakeholders who wished to read a draft of their interview summary were afforded that opportunity and a small number provided edits or additions to the interview summaries, which were incorporated into the final summary by the interview team.

While the stakeholders interviewed reflect a broad and diverse group of Georgia citizens from all over the state, the number of participants was not large enough to reflect a “statistically significant” representation of the views of all Georgians. That was not our intent. We believe, however, that this collection of views provides a solid starting point for beginning needed crucial conversations.

We note in particular that our stakeholder group did not originally include meaningful representation of the young adult population. To obtain some insights from this segment of the population, we convened a focus group on September 30, 2015, to reach out to community members aged 15-18 to seek their views. A summary of the views expressed at that session is set forth on pages 56-58 below.

The stakeholders who were interviewed spoke about their roles in, experiences with and opinions about potential changes in law or policy relating to community law enforcement relations. The subject matter addressed in the interviews paralleled the issues outlined in Parts I and II of this report. Thus interviewees provided their thoughts and recommendations on actions that might be taken to improve those relationships and to reduce the likelihood of future encounters between law enforcement and citizens of the type defined in this report as “critical encounters” or “incidents of concern.” In addition, the stakeholders provided their views on how law enforcement should respond to incidents of concern in the investigation and charging processes.

The stakeholders provided valuable and candid comments about what is working well, and what could be improved, in community/law enforcement relations in Georgia. The individuals interviewed held a range of views on the issues. They expressed mixed opinions regarding the role and quality of services that law enforcement is providing relative to police involved incidents with citizens. Some stakeholders expressed high satisfaction with the state of community/law enforcement relationships in Georgia, while others expressed dissatisfaction with that relationship. Irrespective of their opinion on the state of the relationship, the majority of stakeholders expressed opinions that changes could be made to improve the relationship.

Excerpts from stakeholder interviews in both the General Public and Law Enforcement Groups are included in the discussion below. This discussion is organized to parallel the key issues identified in Part I and analyzed in Part II of this report. These excerpts either reflect common responses provided by stakeholders on a topic or provide a unique perspective on a particular issue. Appendix F includes additional excerpts from the interviews, keyed to the questions being answered by the stakeholders.

## **A. Law Enforcement Community Relations**

The stakeholders were first asked to provide their general views on the state of community/law enforcement relations in Georgia. A common theme was the need to develop methods of greater understanding between law enforcement and the communities they served. An African American Prosecutor in Metro Atlanta summed it up as follows:

There is a lack of trust by many in the community for police and vice versa. There is a level of disrespect, particularly by teenagers, for the police. They are not being accurately taught their rights and perhaps do not engage with why the police do what they do. Some of the lack of trust is earned, but we have to develop trust in the police. As long as we don't, we will have problems. I think we need to encourage integration in this state, people of different races and backgrounds actually living in the same community and interacting on a daily basis. People tend to self-segregate, or just stay with what is comfortable and what is known. We need to have more friendships and interactions. Since we

do not do this very well, when an event happens, people resort to their base historical view of other people and their prejudices, implicit and overt, make themselves apparent. People need to be around each other enough to recognize that people are people and we are all very similar. We have stereotypes that need to be broken down. There will be gaps but we have to have people we trust in law enforcement – that's it.

Stakeholders in the in the **General Public Group** provided the following comments on community law enforcement relations in Georgia:

- Civil Rights Advocate (African American): “Police relations all across the country are out of control. This needs to be repaired because we need the police and they need to be trusted.”
- University Professor, Metro Atlanta (Asian): “The relationship is relatively poor. There is a lot of distrust of the police and at the same time a feeling that the police aren't doing enough. There are few interactions between neighborhood associations and police and police are frustrated because they do not feel they have control over the problems they are being asked to control.”
- Community Leader, Metro Atlanta (Asian): “Community/Law Enforcement relations are below average – there are not enough language services to assist these communities with law enforcement related issues. The value of bilingual law enforcement officers being present in minority communities cannot be overstated.”
- Attorney, Metro Atlanta (Caucasian): Noting that his neighborhood is a low crime neighborhood, “police officers in my neighborhood are generally responsive to community needs; the police are not adversarial.”
- University Professor, Northeast Georgia (African American): “Athens is a university town but it is one of the poorest per capita income counties in the United States. One has to appreciate that for this question, police relationships with the predominantly African American poor community are not as bad as some urban areas, but I think there are the same issues with trust.”
- Elected Official, Rural County in Central Georgia (African American): “Relations are great here. We do not have incidents.”
- Childhood Development Specialist, South Georgia (African American): “There is tension with officers as well as within the communities they serve. This is primarily due to media reports and individuals not being educated on the issues. The relationship in the general community could be better. I attribute this to a lack of education and misunderstanding within the general community.”
- Minister, South Georgia (African American): “The relationship is not good. The community needs to have better understanding on how to interact with the police. More education and training for the community are necessary. It goes both ways.”
- City Planner, Metro Atlanta (Caucasian): “In Atlanta, neighborhoods partner with the APD. The police are visible. Interactions with the police are positive. My perception though is that there are differences in how the police treat different demographic groups.”

Responses from the **Law Enforcement Group** varied, but most stakeholders in this group felt that community/law enforcement relationships in Georgia were above average, and many noted the concerted effort being made to achieve better relationships.

- Police Administrator, West Georgia (Caucasian): “We have a good relationship with the community.”
- Judge and Former Prosecutor, Metro Atlanta (African American): “Law enforcement should reflect the community in which they serve and must be educated to understand the community they serve.”
- Police Educator, Metro Atlanta (Caucasian): “I think overall the relationship between communities and law enforcement in the state is good but there are some officers who probably need to either find another profession or get more training. The majority of police officers here are very educated about cultural issues, disability issues such as personality disorders, schizophrenia, and say ‘that’s the best training I’ve ever received.’ I think it is so important that we continue to educate people about the issues.”
- Prosecutor, Metro Atlanta (African American): “I think there is a misunderstanding of what the police can and cannot do under the 4<sup>th</sup> Amendment, which leads to negative reactions by citizens relative to interactions with police. There is no understanding by citizens of why police do what they do. The problems with the current relationships are everybody’s fault. The root solutions are complex.”
- Police Chief, South Georgia (Caucasian): “Our police/community relationship is excellent, but not good enough.”
- Police Chief, Middle Georgia (Caucasian): “It’s a good relationship, but the department has put much work into it.”
- Sheriff’s Department Officer, Northeast Georgia (Caucasian): “We have a good relationship with the community. We attend neighborhood watch program meetings with the community, we partner with zones in communities, and the deputies often meet with people. There is a relatively open line of communication, and not just the troubled areas, in all areas. We can also establish positive relationships in communities. The police department becomes a stakeholder in the community.”

## 1. Key Policies

### a. Community Policing Practices Generally

The stakeholders were then asked about community policing practices and policies in their communities, the extent to which they existed, the extent to which the public had input in the development of those policies and the effectiveness of those practices and policies in promoting good relationships between the community and law enforcement. The **General Public Group** had little knowledge of the policies and responded that they did not believe the public had significant input to the development of those policies. The **Law Enforcement Group** stated that such policies do exist in virtually all police departments but they generally agreed that the public did not have input into development of those policies.

### General Public Group

- Child Development Specialist, South Georgia (African American): “Community policing initiatives in my community include outreach programs and seminars to keep the community well-informed on issues and how to handle problems the correct way. In addition, initiatives included officers walking around and talking to citizens and other attempts to relate with them on a personal level.”
- University Professor, Metro Atlanta (Asian): “In Atlanta, there are efforts to set up communication with communities- to be nice to kids and make everyone feel better about the police. This is more social work and PR, which is not a bad thing, but it is not community policing. There is nothing about race in these initiatives. This seems to be the elephant in the room.”

- Criminal Lawyer, Metro Atlanta (Latino): “Police patrol the neighborhoods in [my] area and offer their cell phone numbers to citizens so they can be readily reached.”

## Law Enforcement Group

- Police Administrator, West Georgia (Caucasian): “Community policing requires law enforcement officers to converse with the community and Muscogee County law enforcement is well connected with the community. Law enforcement officers are trained to interact with the community.”

### b. Policies for law enforcement engagement with the public as they relate to use of deadly force, stop and search practices and interaction with vulnerable populations.

The stakeholders were asked about their knowledge of what law enforcement policies exist in Georgia, including policies on use of deadly force, stop and search practices and interaction with vulnerable populations such as persons with mental illness or other disabilities, juveniles and persons with addictions. They were asked whether those policies were made available to the public, and the extent to which they are effective. A majority of the **General Public Group** stakeholders did not know if there were such written policies, but assumed that there were. This group typically had little knowledge about the adequacy of those policies. The **Law Enforcement Group** reported on the policies that exist and felt they were generally effective.

### c. Policies on Use of Lethal Force

The vast majority of stakeholders in both groups agreed that the police departments in their communities have policies relating to use of force. In the **General Public Group**, most respondents were unable to give an opinion on the adequacy of such policies. Those who did provide a response commented as follows:

## General Public Group

- Business Person, West Georgia (African American): “I would have to say adequate. I haven’t heard of any problems or incidents.”
- Attorney, Metro Atlanta (African American): “When you use deadly force, there are good reasons for policy, but it comes down to the practice in many instances and the judgment call to be made about when to actually use it. The policies I hesitate to second-guess; they make sense as-written. The problem is police officers have to decide when to use deadly force which can vary from person to person and situation to situation.”
- Attorney, South Georgia (Caucasian): “It is not necessarily an adequacy question but it is the practice or teaching of it that is lacking. Granted, the police officer’s work is not an easy job.”
- Attorney, Metro Atlanta (Caucasian): “A policy is only as good as its honest enforcement. I believe that the policy indicates that force is to be used only when no other method is possible. There should always be an alternate to deadly force. I believe the policy isn’t being followed because of a lack of sufficient training.”

## Law Enforcement Group

- Police Administrator, West Georgia (Caucasian): “Strenuous testing of officers using less than lethal devices under multiple situations and scenarios should be enforced.”
- Judge and Former Prosecutor, Metro Atlanta (African American): “The policy is only as good as the man or woman who carries it out.”

- Police Educator, Metro Atlanta (Caucasian): “Officers need to be thoroughly trained and certified. They also need to be trained in other methods rather than using less than lethal technology. We work on physical force; part of the CIT training is the de-escalation. We’ve worked with sheriff’s departments, chiefs of police departments; we’ve trained numerous people in Georgia State.”

Several stakeholders expressed concern that to protect the community and themselves, police officers needed the discretion to use that degree of force that the officer felt was necessary under the circumstances.

- Minister, East Georgia (African American): “Police need to be protected from harm. Police should use whatever force is necessary to stay protected. It is a judgment call – what is necessary.”

Some stakeholders expressed concern that too much force is often used by police officers and that more training on the use of force was important.

### **Additional Stakeholders**

- Coach and Former Police Officer, Metro Atlanta (African American): “Just because you may be a police officer in a difficult environment, there is no need to primarily rely on lethal weapons. Officers need to know how to be personal with the public/people.”
- University Professor, East Georgia (Caucasian): “Police officers are trained to shoot to kill. They are primed in training to do that reflexively. Police do have a hierarchy of force. They get to the use of deadly force very quickly. Also, police need training around the issue of authority – how not to react to perceived affronts to their authority.”
- Police Educator, Metro Atlanta (Caucasian): “I think if somebody reports having used those devices a lot, there needs to be an investigation because I don’t think it’s really necessary use.”

#### **d. Policies on Stop and Search Practices**

As with policies relating to use of force, the vast majority of stakeholders agreed that the police departments in their community have written policies on stop and search practices but the stakeholders in the **General Public Group** had little understanding of what those practices were or whether they were appropriate.

Some stakeholders in the **General Public Group** expressed concern that that the policies were not appropriate.

### **General Public Group**

- Community Leader, Metro Atlanta (Latino): “The passage and implementation in Georgia a few years ago of legislation which permitted and encouraged law enforcement officers to confront citizens about their immigration status led to profiling and substantially raised the fear and distrust of police in the Latino community. This consequence is only beginning to abate somewhat now.”



#### **e. Policies Relating to Interactions with Vulnerable Populations**

Most stakeholders from both groups stated either that such policies existed or that they were sure they existed. Many were not able to provide an opinion on how effective those policies are.

#### **General Public Group**

- Attorney, Metro Atlanta (Caucasian): “In my experience in an in-town Atlanta neighborhood, the police demonstrate understanding in dealing with situations involving homeless or mentally ill people who are present in the area.”
- University Professor, East Georgia (Caucasian): “Communication on the challenges for the mentally ill matters. [Name] was a mentally challenged man, who was shot and killed while unarmed. The DA refused to take the case to the grand jury. He later lost a close election because the black community voted against him based in part on his decision not to send the case to the grand jury. The long-term response from the police department was to add more training on mental health. Now there is the [Name] Festival.”
- Child Development Specialist, South Georgia (African American): “The adequacy of police policies relating to vulnerable populations is difficult to measure and depends on how they are interpreted by individuals who are implementing them. In general, the policies are good.”

#### **Law Enforcement Group**

- Police Educator, Metro Atlanta (Caucasian): “The jurisdictions that are really engaged in CIT do have policies. For instance, the Atlanta Police Department was one of the first jurisdictions to be involved in CIT so they changed quite a few of their policies to deal with people that are in a crises or have a disability. I think the polices are effective and it has improved the job for officers because it is hard enough for law enforcement to deal with criminals, but when they can separate out criminal intent from the people who are reacting because of the disability it just makes their job so much easier.”

#### **f. Public Input on Law Enforcement Policies Generally**

When asked about input to police policies, several stakeholders discussed their involvement in developing such policies, including their association with organizations including the American, Georgia and local Bar Associations, Citizen Groups, Civil Rights Activist Organizations, and other groups. Many of the stakeholders believed the public should have such input.

- University Professor, Metro Atlanta (African American): “I have challenged rules and policies that allow racial profiling.”
- Minister, East Georgia (African American): “Law enforcement needs to invite us to do this.”
- Business Leader, Metro Atlanta (African American): “At the Neighborhood Planning Unit meetings, we discuss crime statistics and the policy of how to address crime. Nuisance issues are also discussed and how to address those issues in the communities.”
- Business Leader, South Georgia (African American): “The city commissioner has appointed board members to review and implement policies.”
- Attorney, Metro Atlanta (African American): “Through membership in community organizations like the Georgia Gate City Bar Association and the New Leaders Council we try to engage officers and community members to be more involved with proper policing.”

## **g. Use of Technology by Law Enforcement relating to Engagement with the Community**

Stakeholders were asked about the use of technology by law enforcement and their opinions on the adequacy of that technology, particularly as it relates to body camera usage.

A majority of stakeholders in the **General Public Group** favored the use of body cameras.

- University Professor, Metro Atlanta (African American): “I am in favor of body cameras. Police interaction with the public should be transparent. The devices would benefit police officers and the community.”
- Former District Attorney, Metro Atlanta (Caucasian): “Cameras are valuable. They can act as a deterrent to misbehavior by suspects.”
- Criminal Lawyer, Metro Atlanta (Latino): “In Cobb County, the police use patrol car cameras but have very limited use of body cameras. Patrol car cameras allow for ‘lost videos.’”
- Coach and Former Police Officer, Metro Atlanta (African American): “Body cameras are a very valuable resource in keeping people accountable for their actions. Of course, technology can be manipulated. However, cameras should be used more than they are currently being used.”
- Criminal Lawyer, Metro Atlanta (Latino): “Body cameras are very valuable tools to exonerate or convict. They should be used across the board.”

In the **Law Enforcement Group**, stakeholders favored body camera use as well.

- Judge and Former Prosecutor, Metro Atlanta (African American): “There are privacy concerns, however use of body cameras is valuable for reducing complaints against police departments.”
- Law Enforcement Supervisor, South Georgia (Caucasian): “Value of body cameras. I would consider them to have a lot of value, but they shouldn’t be considered as the single piece of information used to indict or dismiss. The challenge will be convincing officers the devices are for their benefit. You can expect push-back from police unions claiming violation of privacy and other issues.”
- Prosecutor, Metro Atlanta (African American): “I think the use of cameras is good across the board. Citizens expect there to be video recordings of police interactions now. Jurors in particular expect there to be evidence provided to them through recordings at the scene. Failure to have these could negatively impact how we can prosecute a case.”

Many stakeholders in both groups felt that body cameras improved law enforcement and the community’s ability to receive the facts accurately.

### **General Public Group**

- Lawyer, Metro Atlanta (Caucasian): “Video is what it is, but it’s better than eye witness description (including officers). People don’t always tell the truth. On the other hand, video is susceptible to being tampered with or altered. Individual privacy must also be respected.”
- Advocate, Metro Atlanta (Asian): “Body cameras are absolutely necessary” [to record what occurred in an incident particularly where] “non-English speakers may be unable to explain the situation they find themselves in” [as victims or alleged perpetrators of a crime].

However, one stakeholder who commented was less supportive of the use of body cameras as a viable solution:

- University Professor, Metro Atlanta (Asian): “The underlying structure of the institutions of law enforcement and their actual communications with community are what is key. You can’t just look at it from perspective of the use of the technology to solve things.”

At least one member of the **Law Enforcement Group** identified some challenges with the use of body cameras:

- Former District Attorney, East Georgia (Caucasian): “There can be technical problems with cameras, and intent to disable them. They cannot capture events from behind the police officer. Cameras may present a problem at trial as cameras will not capture everything and juries might begin to expect they must have a video of the event to convict. The cost of cameras is prohibitive for some police departments, and there are challenges with storage, retention and public access to the material.”

Another commented to the contrary:

- Prosecutor, Metro Atlanta (African American): “I see no challenges. I do not see any constitutional challenges to their use. If a police officer is somewhere that he is not supposed to be (a warrantless search, for example) what he observes will not be admissible. The same should be true of events captured by a body camera.”

Several stakeholders encouraged consistency in the use of body cameras to insure fairness.

- Civil Rights Lawyer, Metro Atlanta (African American): “There needs to be a policy on use that is consistent. As with the state troopers, when the siren starts, the recording starts. Cost of the cameras is an issue, how that can be funded and how constitutional issues are balanced between protection of police and community privacy interests.”

## 2. Training

The **General Public Group** was asked about their knowledge of police training. Most of these stakeholders were aware that police training is required and what the sources of that training are. Approximately half of the respondents felt that police training was adequate, while half felt it could be improved.

### General Public Group

- Coach and Former Police Officer, Metro Atlanta (African American): “Training is adequate if the trainers are good. The quality of the training experience varies based on the trainer. Training should be more in depth and more interactive. For example, integrity training is currently completed on-line. This is not the best method, as the department cannot adequately assess whether the officer is truly learning the methods.”
- University Professor, Metro Atlanta (Asian): “It is not police officer training as much as it is having an actual incentives structure under which they can work. If the incentives were to reinforce and reward positive interactions and to penalize/prosecute negative and criminal conduct, we would have a more effective system.”

In the **Law Enforcement Group**, the stakeholders were asked about what training was provided and whether officers in their departments received Crisis Intervention Training (“CIT”) or cultural sensitivity training. All stakeholders in this group were familiar with the police training requirements in their community. The vast majority of respondents stated that in their departments officers do receive CIT training, including cultural sensitivity training.

- Police Administrator, West Georgia (Caucasian): “Training is adequate in many respects but officers are only required to get 20 hours of training a year to maintain POST certification. Only about 4 hours is use of force training. The CIT 40-hour course is not mandatory. FOP (Fraternal Order of Police) has attempted to push more training but has received push back. Fire arm skills diminish with time and lack of use. Training needs to be repetitive.”
- Police Administrator, West Georgia (Caucasian): “With mental health issues, we have to temper the use of force and focus on de-escalation. Policies have been tweaked to protect officers addressing mental health crises. The policies addressing mental health crisis are good, but developmental disability policies are barely adequate. It is hard to write a policy for developmental disability and addiction. There are so many unknown factors involved.”

With respect to police training curriculum, all stakeholders were asked whether they had any recommendations for change that would enhance police community relations. Some of the recommendations included the following:

### **General Public Group**

- Lawyer, Metro Atlanta (Caucasian): “Training of Atlanta Police is not 100%. My number one problem with police is the police [officer’s] heightened sense of power while in uniform and carrying a gun. It is tempting to abuse such power. ‘I am in charge, how dare you question my authority.’ As a law abiding citizen, I should not feel threatened in a communication with a police officer nor have the police officer react completely disproportionately to the situation. It will take a fundamental change for this scenario to improve.”
- Civil Rights Lawyer, Metro Atlanta (African American): “Training should be improved, particularly as to interacting with different populations in the general public. The challenge would be funding a mandate for such improvement.”
- Coach and Former Police Officer, Metro Atlanta (African American): “The training lacks ongoing diversity and cultural training to prepare officers on dealing with people they encounter. I believe there should be ongoing ‘cross-cultural’ training to deal with people of different race and culture.”

The **Law Enforcement Group** agreed that additional police training would be very beneficial to officers and the community, regardless of their position in their law enforcement agency or the location of that agency. This group’s recommendations included:

- Law Enforcement Supervisor, South Georgia (Caucasian): “Georgia is behind in policy and training. We need a longer police academy. There is more need to teach people how to talk to each other. Officers need to be more aware of cultural diversity. I tell my officers to not tell people to ‘have a nice day’ after giving them a ticket, because getting a ticket can ruin a day.”
- Several Law Enforcement Officers (African American and Caucasian): “We need more classes on cultural diversity. We need to better understand these biases and how the perception can cause someone to inflict harm or deadly force on a person. Such training should be an annual requirement.”
- Law Enforcement Supervisor, West Georgia (Caucasian): “Every sworn officer ought to have CIT training expanded by a week. In addition, they need better training on developing communication skills. There should be a combination of class room training and role playing, or practical exercise. The academy talks about community policing but as far as coming out, understanding and applying it, the philosophy is not well taught or understood. Law enforcement is a misnomer. Fifteen percent (15%) of what officers do is actual law enforcement, with the overwhelming majority being social work, mediation, and counseling.”

- Law Enforcement Officer, Metro Atlanta (African American): “Basic and effective communication skills training is needed. A patrol officer has a ‘safe haven’ in the car but it doesn’t allow for officers to interact with the community. If the officer who is patrolling – especially in a residential area – is driving through the neighborhoods slowly versus setting up speed traps in the same location, people would be more apt to disclose critical information.”
- Law Enforcement Supervisor, South Georgia (Caucasian): “We should require more hours of training, more scenario-based training, more time on the range using their weapons, more training on dealing with the mentally ill and drug-addicted, and more simulator training using real world examples. There is a state-of-the-art interactive simulator training available in many communities which is helpful.”

Some stakeholders recommended additional police training with respect to vulnerable populations.

- Police Administrator, West Georgia (Caucasian): “Training needs to be repetitive. With mental health issues, we have to temper the use of force and focus on de-escalation. Policies have been tweaked to protect officers addressing mental health crisis. The policies addressing mental health crisis are good, but developmental disability policies are barely adequate. It is hard to write a policy for developmental disability and addiction. There are so many unknown factors involved.”

With respect to training on use of force, several stakeholders responded that there should be better training on when to use lethal force.

- University Professor, Eastern Georgia (Caucasian): “Police officers are trained to shoot to kill. They are primed in training to do that reflexively. Police do have a hierarchy of force. They get to the use of deadly force very quickly. Also, police need training around the issue of authority – how not to react to perceived affronts to their authority.”

### 3. Data Collection & Transparency

#### a. Detention Data Collection and Accessibility

Most stakeholders in the **General Public Group** believed that police departments keep data, however eighty-five percent (85 %) of responders were not sure what data is kept, whether it provides the demographics of officers and citizens involved in interactions, and whether it is publicly available. Most questioned whether the data was accessible or accurate. In the **Law Enforcement Group**, all responders reported that such information was collected, and the majority stated that this information was publicly available.

#### General Public Group

- Criminal Lawyer, Metro Atlanta (Latino): “The data does not seem accessible to the public.”
- Broadcast Journalist, Metro Atlanta (Asian): “Frequently when my company requests data from police departments, we are told the police department has to charge for the compilation of this material and it is expensive to obtain which has on occasions made obtaining the data impractical.”

#### Law Enforcement Group

- Law Enforcement Supervisor, South Georgia (Caucasian): “That type of data should be available because it is a public record. But contrast Georgia with Florida: Georgia does not have a central computerized database, whereas upon an e-mail request, FDLE will provide access to an electronic database with 20 years of data and over 12,000 searchable entries.”
- Judge and Former Prosecutor, Metro Atlanta (African American): “The data is there, it is valuable, but it is inaccessible.”



## **b. Police Department Demographics Data**

The **Law Enforcement Group** was asked whether information concerning the demographic composition of law enforcement agencies was collected and made accessible to the public. Sixty percent (60%) said that such data were collected and made publicly available. Forty percent (40%) responded that the data were not collected or they did not know if the data were collected.

In addition these interviewees were asked whether hiring practices were in place in the law enforcement agencies in Georgia to assure nondiscriminatory hiring practices. Ninety-three percent (93%) of Law Enforcement Group responders said “yes.”

## **4. Community Engagement & Outreach**

### **a. Community input to such policies**

Interviewees were asked whether the police departments in their communities seek input from community members on development of police department policies. Among the **Law Enforcement Group**, two-thirds of responders said “yes” to this question while half of the **General Public Group** answered the question “yes.”

### **General Public Group**

- Business Leader, West Georgia (African American): “The Mayor’s Forum and City Council meetings give plenty of opportunities for citizens to hear what is happening and to have a voice.”
- Business Manager, Metro Atlanta (African American): “In my area there are town hall meetings quarterly and workshops for the community on topics such as gun safety and neighborhood watch.”
- Business Manager, Metro Atlanta (African American): “Police officers frequently attend neighborhood association meetings, but the interaction generally concerns small issues only.”
- Non-Profit Organization Worker, Metro Atlanta (Caucasian): “Police show up at the Neighborhood Planning meeting, they listen to issues raised by the community, and officers are open to feedback from the community on training and other issues.”

### **b. Citizen Review Boards: Existence and Effectiveness**

Stakeholders were asked about their knowledge of the existence and adequacy of citizen review boards in their communities, to assist in response to incidents of concern, and about what police department policies were in place to permit citizen reports of police misconduct.

In the **General Public Group**, 70 percent said their communities have citizen review boards but few had opinions about their effectiveness. In the Law Enforcement Group, 50 percent reported that there was a citizen review board in their community.

### **General Public Group**

- City Planner, Metro Atlanta (Caucasian): “The citizen review board is a city-wide board (in Atlanta) and is highly ineffective. The process to join the board is political and once members join the board, they are not very enthusiastic about taking action or bringing about change.”

### **Law Enforcement Group**

- Police Educator, Metro Atlanta (Caucasian): “I can see how a citizen review board could be effective, but I can also see how it could get in the way of law enforcement doing their job--you know, trying to please everyone rather than trying to protect the citizens from criminals. I think it would just depend on who was involved and what their motives were.”

## **c. Procedures for Reporting and Investigating Alleged Police Misconduct**

All stakeholders were asked whether any processes existed in their communities for reporting or investigating police misconduct claims. One hundred percent of the Law Enforcement Group and 90 percent of the General Public Group responded “yes.”

## **B. Responding to Critical Encounters**

### **1. Investigation Responsibility**

The stakeholders were asked about policies relating to response to and investigation of incidents of concern. Most of the **General Public Group** stakeholders were uncertain if policies existed as to which entity would investigate a police incident of concern, but many felt that an independent agency should investigate. Most believed that the Georgia Bureau of Investigation should be responsible for such an investigation, although some responded that the Internal Affairs Division of the involved police agency could conduct the investigation adequately.

#### **a. Policies for Investigating Incidents of Concern**

All of the Law Enforcement Group said “yes” such policies exist. As to what entity should investigate such events, many felt that the GBI was equipped to handle this task.

### **General Public Group**

- Lawyer and Former Prosecutor, Metro Atlanta (Caucasian): “I would not want a separate investigatory unit from the prosecutor’s office having jurisdiction over the event as that can be too political. Regarding a separate county or municipal police department handling the investigation, I see a problem with the disparity between rural and suburban departments and what manpower is available to each. “

### **Law Enforcement Group**

- Law Enforcement Supervisors (African American and Caucasian):
  - a. “It is beneficial. It allows you to take away any emotions so it can put any biases out of the jurors’ minds. Public perception is extremely important, and some may feel there cannot be an impartial investigation without an outside investigator.”
  - b. “It helps prevent cover-ups.”
  - c. “It allows for complete transparency.”
  - d. “It’s hard to be impartial if one of their own is involved. It keeps the investigation fair and impartial.

Others felt that the involved Police Department’s Internal Affairs unit should conduct such an investigation, although a former Judge and Prosecutor noted:

- “The handling of such incidents by Internal Affairs unit is not very effective. The GBI is a resource but their personnel investigating police involved incidents should be rotated possibly every 6 months to 1 year to discourage familiarity with police departments.”

Some stakeholders in the **Law Enforcement Group** felt that whether an independent investigation was necessary depended on the circumstances of the event. Some stakeholders in that group were concerned about where the staff and funding for that would come from. The stakeholders who disagreed explained that the logistics of handling an investigation as quickly as necessary would often not lend themselves to assignment of an independent entity.

**b. Independent investigations of police involved shootings and information to the public**

Ninety percent (90%) of stakeholders in the **General Public Group** (the majority of whom had no experience in investigation or prosecution of such events) agreed that independent investigations of critical encounters were advisable.

- Lawyer and Former Prosecutor, Metro Atlanta (Caucasian): “There is a public perception that police culture is one of cover up, and there might be some truth to that. No inside investigator is going to do as thorough a job as an outside investigator”.
- University Professor, Metro Atlanta (African American): “It is difficult to investigate yourself. Having an independent entity would be better for public relations because it adds credibility to the process.”
- University Professor, East Georgia (Caucasian): “An independent investigator for police misconduct cases insures no bias, no conflict of interest.”
- University Professor, Metro Atlanta (Asian): “There should be an entirely independent investigation, but I cannot conceive of what entity would be entirely independent because there is such interlocking between local, state and federal investigating entities. A multi-agency plus community body that could be created to balance out the organizational incentives.”

In the **Law Enforcement Group** (who had experience with these issues), most interviewees agreed. However, several stakeholders in this group noted that not every incident of concern should require an independent investigation.

- Police Administrator, Middle Georgia (Caucasian): “The district attorney should be responsible for reviewing investigation. That is the job of a DA. Let the DA do his or her job. Not creating an additional layer of bureaucracy beyond the assigned DA, and not treating the police officer any different than any other citizen is best.”
- Police Educator, Metro Atlanta (Caucasian): “I disagree that mandating an independent investigation is needed. It depends on circumstances. Sometimes you do not need to bring in another independent agency and spend taxpayer dollars and add more red tape because it can be handled internally.”
- Former District Attorney, East Georgia (Caucasian): “There should be a blanket rule that is legislated with no options and no discretion that if there is a police involved shooting with injuries, GBI steps in immediately to take over the investigation. The investigating agency needs to be perceived by the public as objective and even handed. In addition, it can be difficult for the local agency to investigate and prosecute its own employees due to relationships.”
- Coach and Former Police officer, Metro Atlanta (African American): “Sometimes politics can change things in a way you would not expect. It can change how hard they will push or do not push towards prosecution. If a different entity, it would be better.”

- Judge and Former Prosecutor, Metro Atlanta (African American): “An independent investigation is advisable and should be mandated state-wide in the event of a police involved shooting. ‘Self-policing’ is ineffective; however, it might be advantageous to have an insider working with the independent prosecutor.”
- Prosecutor, Metro Atlanta (African American): “Where there is a state or local police involved incident, the FBI may, and sometimes does, investigate and the US Attorney’s office may, and sometimes does, prosecute those cases. In cases where an independent investigation is warranted, the US Attorney’s office is equipped to handle such an investigation and because it does not consist of elected officials it does not have the pressure to respond to constituents that elected officials might have. It holds an independence that is helpful in these situations. Not every case involving a police involved event is appropriate to be prosecuted by the US Attorney’s office, however.”

Some stakeholders in the **General Public Group** felt the same:

- Minister, East Georgia (African American): “Not every case should be handled by an outside investigating agency. An outside agency should be involved when there is serious controversy surrounding an event. This should be done to make sure there is no partiality or cover up out of concern about political fallout. Credibility is better when an independent agency is involved.”

Several stakeholders were concerned that constraints in funding might drive the decision to conduct an independent investigation.

- Civil Rights Lawyer, Metro Atlanta (African American): “The challenge is getting the Legislature to fund this process and what agency could perform the investigations? The GBI is already swamped with work.”

### **c. The Critical Factors in Determining Whether a Police Involved Incident is Investigated Independently**

Stakeholders in the **General Public Group** were asked their opinions on how to determine when an independent investigation should occur.

#### **General Public Group**

- Criminal Lawyer, Metro Atlanta (Latino): “The facts of the shooting or incident, apparent justification or lack thereof.”
- Former Prosecutor and Educator, Northeast Georgia (Caucasian): “We need a blanket rule, legislated, with no option or discretion. If there is a police involved shooting with injuries, a unit of GBI should step in immediately or within 24 hours.”
- Project Manager, Metro Atlanta (African American): “It should be a state-wide mandate – no room for gray areas or interpretation.”
- Educator, Middle Georgia (African American): “A statewide mandate would be appropriate. I think we should have some neutral entity or process made public so that the people know what happens in these cases.”

A **Law Enforcement Group** stakeholder added:

- Police Educator, Metro Atlanta (Caucasian): “The advantage would be if you have some people that are not honest and they have something to hide, and if you have corruption at some level that would help. I’ve read about the corruption in some of the other states, but I do not see it here. I believe it would not be necessary here.”

#### d. Information Dissemination Regarding Incidents of Concern

The interviewees were asked their views on policies related to the public disclosure of information relating the incidents of concern during the course of an investigation. 80 percent of **General Public Group** and 85 percent of **Law Enforcement Group** stakeholders felt that some information about a police involved shooting should be made public quickly. Stakeholder opinions on what information should be provided and when it should be made public differed.

##### General Public Group

- Coach and Former Police Officer, Metro Atlanta (African American): “The public has a right to know once things are in place for their protection and to know what is going on in their community.”
- Broadcast Journalist and Community Leader, Metro Atlanta (Asian), “Before announcement of an incident is made, the community should be secured, which in my experience is typically done, and then information should be released in 4 to 5 hours to avoid speculation, turmoil, misinformation and assumption from building in the community.”
- Criminal Lawyer, Metro Atlanta (Latino): “Little information should be disclosed until the matter is resolved, but some information about the incident should be shared.”
- Coach and Former Police Officer, Metro Atlanta (African American): “I can understand why you may not disclose too much information and that only general or broad information is provided. You don’t want people to overreact and cause chaos or friction in the investigation. However the incident should not be hidden. The public should know what the event was and what is being done.”
- Lawyer and Former Prosecutor, Metro Atlanta (Caucasian): “It is irresponsible to make a statement until investigation is complete. Initially there should be notice of the event, notice that an investigation is ongoing, and then no comment until the investigation is complete at which time notice that the investigation is complete should be provided along with information about whether or not an indictment was issued and against whom, with no comment what the outcome of the indictment should be because who is at fault in the event can be wrong.”
- Judge and Former Prosecutor, Metro Atlanta (African American): “Once a suspect is arrested, facts may be disclosed but the identity of the involved police officer or victim should not be immediately disclosed to save the suspect and his family from embarrassment, and disclosure should occur only after proper notifications of family have been done.”

Some stakeholders were concerned about what impact media coverage might have on conducting a fair investigation.

- University Professor, Metro Atlanta (African American): “Other than the identity of the victim and the accused, the incident should not be discussed with the public until all of the evidence is collected. Then, it should be discussed based on the facts. We currently disclose too much, too soon. The media is controlling this and is a culprit in what is happening across the country. We need to discuss the influence of the media and lack of integrity in its reporting.”
- Minister, East Georgia (African American): “We should be very careful when providing information to the media to make sure nobody’s due process is violated; to make sure facts are correct and that there is time to develop the facts.”

Stakeholders were also asked specifically whether the identity of the police officer or the involved community member in incidents of concern should be disclosed.



Slightly more than half of the **General Public Group** agreed that the identity of officer and of the community member should not be disclosed. Eighty percent (80%) of responders in the **Law Enforcement Group** agreed that identities should not be disclosed. Some were opposed to disclosure primarily due to concerns that disclosure would negatively impact the investigations.

### **General Public Group**

- Lawyer and Former Prosecutor, Metro Atlanta (Caucasian): “Identities should not be made public -- but that is not realistic with the media today. It’s a tough call, if the information about identity would be beneficial, it should be released. With regard to the police officer, he may or may not be criminally responsible and publicizing his identity may affect his ability to continue to work based on public opinion response.”
- University Professor, South Georgia (Caucasian): “Whether to identify the victim of an alleged police involved incident should be no different from what is done relative to victim identification in other violent crimes.”
- Criminal Lawyer, Metro Atlanta (Latino): “Disclosure should not be made. It may interfere with objective and full investigation of the incident. Factors to consider in what information to disclose would include, the length of service and record of service of the officer, the age of the victim.”

Some stakeholders felt limited disclosure was appropriate, and would promote community trust, or benefit the investigation.

- University Professor, Metro Atlanta (African American): “Only the identity of the victim and accused should be disclosed while the investigation is underway. Not disclosing the parties involved creates suspicion.”

Among the **Law Enforcement Group**, comments included the following:

- Former District Attorney, Northeast Georgia (Caucasian): “The names of the persons involved in a police-involved shooting should ordinarily be made public soon after the incident. There are, however, legitimate reasons for delaying such disclosure: (1) notification of next of kin (if someone has been seriously injured or killed), (2) disclosure of the identities of the persons involved may unduly influence eyewitness testimony (including identification procedures such as photo lineups, live lineups, etc.).”
- Department of Corrections Employee, Metro Atlanta (Caucasian): “There are different aspects of an investigation you can’t give out to the public right away. It gets plastered all over Facebook. The family does need to be notified though.”
- Police Chief, North Georgia (Caucasian): “I would take it case-by-case. You need to protect some information while other information is safe to be released. Officer identity needs to be protected because they are known in the community and the current climate is not cop-friendly. The police officer has a right to be protected.”
- Sheriff, East Georgia (Caucasian): “The information should be made public very quickly- unless the safety of the officer or the victim is at issue. Someone in command needs to take charge of the situation as quickly as possible.”

Several stakeholders felt that since the police officer involved was an employee of the city, county or state that the officer's identity should be made public.

- City Planner, Metro Atlanta (Caucasian): "The officers should be identified. Police officers are employees of the city and the incidents should be public information."
- University Professor, Metro Atlanta (Asian): "With respect to police, the fact that they are public officials and it's their job – it should be full disclosure."

## 2. Making the Charging Decision

### a. Opinions on who should make charging decisions relative to incidents of concern

The stakeholders were asked whether appointment of a special prosecutor should be required in the event of an incident of concern.

In the **General Public Group**, three-fourths of stakeholders said "yes" to this question. In the **Law Enforcement Group**, only half of the stakeholders said "yes" to this question. The half who agreed that an independent prosecutor should be mandated indicated this would remove real or perceived bias. Responses from both stakeholder groups who **avored such a mandate**:

- Community Leader, Metro Atlanta (Asian): "I agree that an independent prosecutor should be appointed to investigate and be responsible for charging decisions in a police related shooting incident so that unquestionably fair investigation process can take place and the public's perception will be that it is fair."
- Coach and Former Police Officer, Metro Atlanta (African American): "Yes, it strikes out potential bias and local politics to allow for true justice."
- University Professor, Metro Atlanta (Caucasian): "The fact that the prosecutor is not beholden to local law enforcement and the community is especially important."
- Law Enforcement Supervisor, Middle Georgia (African American): "We do have a relationship with our prosecutors so there is real bias and the perception of bias. We need an independent investigator who does not know the parties involved."
- Coach and Former Police Officer, Metro Atlanta (African American): "A number of injustices have set precedent of need for it. For the sake of justice for police and citizens it should be mandatory."

Some **neutral responses** on the question included:

- University Professor, Metro Atlanta (Asian): "I disagree with it being mandatory in every case. However, independence from political pressure in the existing relationship between police and prosecutors is a tremendous advantage. Disadvantages include that it gives the illusion of objective findings that may not be true because there are no such things as independent prosecutors."

**Law Enforcement Group** stakeholders who **were opposed to** such a mandate were specific in their reasons for such opposition:

- Prosecutor, Metro Atlanta (African American): "I am anti-mandate. Only trust between the community and law enforcement is going to improve this situation; not every event requires an investigation of this type; and we have limited resources. How can this be paid for?"

- Law Enforcement Supervisor, South Georgia (Caucasian): “I am anti-mandate on requirement of independent investigation. On the one hand, having an outside agency removes the perception of bias. On the other hand, the state agency may not have the experience and expertise required to ensure the matter is properly investigated. Experience and familiarity with the community at the local agency may be better and more valuable than the state agency. One solution might be to have a designated team of investigators, prosecutors, forensics, etc., all external to the local and state agencies.”
- Lawyer and Former Prosecutor, Metro Atlanta (Caucasian): “Such a mandate is not necessary. If there are things in an individual prosecutor’s background, which might affect impartiality, the prosecutor should recuse himself. Prosecutors do a reasonable job of recusing themselves where appropriate, but on the other hand many prosecutors are not likely to see there is a conflict of interest in a situation involving a police involved incident. Prosecutors may be influenced by the notoriety or high profile nature of an event. But that notoriety may cause them to be more cautious too.”
- Law Enforcement Supervisor, West Georgia (Caucasian): “I don’t think that is necessary. The DA is accountable to the community. If they are not making decisions consistent with the legal standard, then they will be held accountable because he or she is elected by the people to prosecute criminal cases in that judicial circuit. If he or she is not prosecuting those cases that the voting public believes should be prosecuted, then the correct way to handle the situation is to vote for someone else.”

Stakeholders were then asked, if an independent prosecutor **were** to be appointed, who should have the authority to appoint that individual, what the selection criteria should be, and who should pay for this individual.

Stakeholders, both in the **General Public** and **Law Enforcement Groups** had several recommendations as to who should have the authority to appoint any independent prosecutor which included: The State Attorney General, the Governor, the Mayor of the involved municipality, the Georgia Supreme Court, and the Chief Judge of the Superior Court for the jurisdiction where the event occurred.

Stakeholders from both groups similarly provided a variety of suggestions as to who any such independent prosecutor should be and what his or her credentials should include.

- University Professor, Metro Atlanta (African American): “I think that each jurisdiction should have a list of independent prosecutors who have been vetted and approved prior to an incident occurring. This approach would eliminate any concern among the public regarding the fairness or biases in the process.”
- Community Leader, Metro Atlanta (Asian): “The person so appointed should be a person of excellent character for honesty, integrity, needs to be a person with 10 to 15 years of experience as prosecutor and needs to not be appointed if he/she has worked with law enforcement people in the jurisdiction at issue.”
- Former District Attorney, Metro Atlanta (Caucasian): “An individual with specific prosecutorial experience. An elected DA in a district nearby where the incident occurred, so that the prosecutor has some local knowledge.”

When addressing the issue of paying for the independent prosecutor, virtually all stakeholders who answered this question responded that the costs should be borne by “The State” or “taxpayers.”

## **b. Prosecutorial Discretion in Handling Incidents of Concern**

Stakeholders were then asked questions about prosecutorial discretion in cases involving police shootings. Specifically they were asked whether there should be some sort of limit on such discretion in cases involving incidents of concern.

### **General Public Group**

- Attorney and Educator, East Georgia (Caucasian): “Whatever system is adopted, it should not eliminate prosecutorial discretion. This is especially true if an independent prosecutor is appointed to investigate and make the prosecution /no prosecution decision. Prosecutorial discretion serves to protect those who have been wrongfully accused from public cries for a meritless prosecution or ‘show trial.’ The grand jury system is not broken. The grand jury is a deliberative body composed of citizens. So long as the investigation is conducted by an independent agency and the prosecution is overseen by an independent prosecutor, there is no reason to believe that the grand jury as it is presently constituted is incapable of rendering a fair decision re: prosecution / no prosecution.”
- Attorney, Metro Atlanta (African American): “Grand juries too often defer to the prosecutor. They may not completely understand the process, and will defer to the perceived expert in the room, who is the prosecutor. Charges would be prepared by advisory board with members selected by same process as Grand Jury selection. The board would be citizens presenting a recommendation to the prosecutor, not prosecutor presenting case to citizens.”
- Attorney, South Georgia (African American): “The current level of prosecutorial discretion is a flaw in the system, not specific to only matters of police misconduct. It allows for personal biases and results in unequal distribution of how cases are dealt with. There should be some entity to check up on how things are handled among different groups of people.”

### **Law Enforcement Group**

- Law Enforcement Supervisor, South Georgia (Caucasian): “I am not in favor of removing or limiting prosecutorial discretion – this is a foundation of our system. I am a strong supporter of prosecutorial discretion. There is no need for special purpose grand jury – we already have a system.” However, this stakeholder also agreed that some changes such as allowing witnesses to have counsel and prohibiting use of hearsay evidence would be appropriate.

## **c. Rights of law enforcement officers in criminal charging situations**

Stakeholders were asked about Georgia law that affords different rights to law enforcement officers investigated for charges because of an incident while they were on duty and whether in their opinion those rights should be retained, abolished or modified.

In the **General Public Group**, the response to this question was fairly evenly spread over the three responses: “abolished,” “modified” and “retained.” Those favoring abolishing these rights said:

- University Professor, East Georgia (Caucasian): “The rights should be afforded to anyone or to no one. I don’t think the police should be considered privileged citizens.”
- Coach and Former Police Officer, Metro Atlanta (African American): “Law enforcement officers should be treated the same as regular civilians and should experience the same system that the public experiences. If anything, there should be harsher requirements on law enforcement officers who have a duty to uphold the law.”
- City Planner, Metro Atlanta (Caucasian): “Everyone should be equal in the eyes of the law. Police officers should not be treated differently based on employment.”

Those **favoring modification** of these rights commented:

- Business Person, West Georgia (African American): “These policies need to be reviewed; do they fit today’s needs?”
- Attorney, Middle Georgia (African American): “Modified. Police officers’ interest in job security and avoidance of criminal charges do not outweigh the public’s interest in not being harmed by the police.”
- Business Person, Metro Atlanta (Caucasian): “All of these laws probably need to be updated for current times; I am not sure why police would be afforded special rights to appear when common citizens do not have those rights.”

Those **favoring retention** of these rights said:

- Educator, South Georgia (African American): “These laws should be retained. The police put their lives on the line to keep the community protected and they should be given those rights in order to protect them.”
- Attorney, Metro Atlanta (Caucasian): “Retained. I do not believe these special rights are inappropriate.”

In the **Law Enforcement Group**, virtually all responders supported retention of these special rights for police officers:

- Chief of Police, Middle Georgia (Caucasian): “Because of the type of job the police have, the expectation for law enforcement is that we are held to a higher standard anyway. Like it or not, we are. Because we are, that sets us apart in these scenarios and processes. There are very few, if any, professions that are like this where we have the authority to take someone’s freedom, life, and rights so that puts us in a different category completely than almost every other segment in our community. So yes, there are certain things that have to be done differently when reviewing what cops have done, especially when determining if what was done is right or wrong. And there’s a justification for being able to do that.”
- Marshall, West Georgia (African American): “If they are going to be in a courtroom then they should have the right to be in front of the grand jury when their career is on the line. If someone has misinterpreted what they said, then they need to be there.”
- Chief of Police, North Georgia (Caucasian): “Police have the perception of self-defense versus act of duty- and that needs to be fully evaluated – only the officer can give his side of the story to the grand jury.”
- Chief of Police, South Georgia (Caucasian): “If the incidents occur in the line of duty, then the officers should be afforded these rights, because they are acting on behalf of the community and they should be able to describe what their perceptions were and the threat that they believed existed that justified the use of force.”
- Police Officer, Middle Georgia (Caucasian): “Officers are held to a higher standard than most, actions follow on duty and off; sometimes people make frivolous claims against officers, so there need to be extra steps to protect this officer.”
- Police Officer, Metro Atlanta (African American): “I think the rights should be retained so that the grand jury can hear firsthand why the officer was at the scene.”
- Chief of Police, Metro Atlanta (Caucasian): “Law enforcement officers put their lives on the line and make these kinds of decisions in a split second. I believe the process is fair, because all an officer can do is provide a statement. Their attorneys cannot ask questions.”



- Chief of Police, Middle Georgia (Caucasian): “Police officers are given the task by the community to serve and protect—they should be afforded the right to tell their side.”

Only a few respondents in the **Law Enforcement Group** felt these rights should be abolished, one of whom said:

- Former District Attorney, Northeast Georgia (Caucasian): “Disparate rights laws should be abolished. The law gives the perception of favoritism and is unnecessary to protect rights of police officers. Their rights are protected by the system itself, such as independent prosecutor.”

### C. Additional Stakeholder Recommendations

Stakeholders were asked to provide their suggestions or recommendations for changes to law, policy or practices to enhance relationships between police and communities in Georgia. The recommendations included additional training for police officers in various areas and particularly cultural sensitivity; citizen education on police policies and why the police take actions under various circumstances; community policing advancements; and use of independent investigators and/or prosecutors for incidents of concern.

#### General Public Group

- Community Leader, Metro Atlanta (Asian): “There needs to be a confidential complaint line that citizens can use to report police incidents and if a jurisdiction has more than 10% of its population speaking another language, that complaint line should provide a bilingual operator, and the jurisdiction should retain bilingual police officers and investigators”.... “Police departments should track response times to calls and how they are handled and look at the demographics related to those response times and resolutions and how they may be different for minority citizens.”
- Lawyer and Former Prosecutor, Metro Atlanta (Caucasian): “If police were paid more, we might have a more professional work force which may be more corruption proof. There are some exceptional people who do this type of work for all the right reasons. I admire the people who go into and deal with danger and difficult situations associated with this work. Those people are built differently.”
- Criminal Lawyer, Metro Atlanta (Latino): “Police Departments should be more transparent in information provided to the community, particularly, related to policies and initiatives. They should publish the results of cases. There should be a citizen review board to review the results.”
- Coach and Former Police Officer, Metro Atlanta (African American): “Criminal justice departments in small towns in Georgia are not focused on promoting justice; rather they just want to keep their departments going. Many citizens are being given time that does not match the crime. Law enforcement is not supposed to be there to invoke fear; rather it should be working together with law enforcement officers protecting the citizens and the citizens abiding by the laws. Changes need to be made in bringing police officers into the field including in-depth assessments in selecting leaders in these positions.”
- Minister, East Georgia (African American): “There should be more community education about policies and procedures for police work to foster better relationships. Police training should be improved. Civilians need to better understand the duties of a police officer which could be done in community forums. Faith based groups could support this process.”
- Civil Rights Lawyer, Metro Atlanta (African American): “Training of officers and law enforcement doing more community outreach. Police need to know the people that they are policing; officers and citizens need to have interactions other than only when there is a law enforcement problem.”
- City Planner, Metro Atlanta (Caucasian): “Increase law enforcement pay; reward officers for excellence; hold officers accountable.”

## Law Enforcement Group

- Police Educator, Metro Atlanta (Caucasian): “I read the papers and keep up with these incidents ...don’t see it as being a huge problem in Georgia. I know it is in the news a lot. I spoke to an officer the other day who said I don’t feel like I can do my job like I’ve been trained to do my job. I think that’s the danger of putting a microscope and second guessing what police officers do. I think the majority of the police officers do a good job. I’m just not sure that we really need to get into this right now in Georgia.”
- Law Enforcement Supervisor, South Georgia (Caucasian): “Agencies should be encouraged and (incentivized or given the resources) to become accredited, but it should not be mandated. Accreditation may not solve all problems, but it would require policies to be reviewed and/or created and problems to be debated and possibly addressed, rather than ignored.”
- Police Administrator, West Georgia (Caucasian): “Expand length of police academy. Increase annual training. Require local government body to be more transparent with function of law enforcement. Offer more educational opportunity. Put more information out.”
- Police Chief, Middle Georgia (Caucasian): “Current training requirements don’t have cultural sensitivity curriculum, but this is a conversation that needs to be had. I tried to get more training on the implicit/explicit racial bias. We need to better understand these biases and how the perception can cause someone to inflict harm or deadly force on a person. You think with your heart, not your mind.”
- Law Enforcement Supervisor, Metro Atlanta (Caucasian): “Training curriculums should train procedural justice: (1) treat people with respect; (2) give them a voice (an opportunity to say what they believe the issue is); (3) treat them fairly; (4) and communicate (tell them what you are doing and why). For that reason, CIT training is critical. Officers need to understand how to de-escalate situations where someone is in crisis, and the officer should have the communication skills to de-escalate the situation without using force. Training can assist in understanding and recognizing when someone is in a crisis and how to determine the best method to defuse the situation.”
- Former District Attorney, East Georgia (Caucasian): “The vast majority of conflict between the police and community occurs in the 14-25 year old age group. We need better education in schools about law, police powers and individual rights. If people understood police powers, they would understand where the line is. If we teach people to stop when told to stop (right or wrong), that there are remedies for inappropriate police stops, will save lives.”
- Law Enforcement Official, West Georgia (African American): “Anytime there is an officer involved shooting, the Governor’s office should have somebody assigned that can come down and oversee the investigation – to actually work alongside the investigators and make sure that everything is being gathered, nothing is being hidden, laws are followed, and to insure that all of the evidence is being turned over.”
- Law Enforcement Official, West Georgia (African American): “GBI should investigate all police-involved shootings, and there should be funding for it. There may also need to be state protocols that DAs have to follow because right now they have unfettered discretion. Whenever there is inconsistency people assume there is favoritism.”
- Law Enforcement Official, Metro Atlanta (African American): “There could be a requirement that police departments not be allowed to investigate their own shootings, but that it not be too prescriptive on who the investigator must be.”

- Law Enforcement Official, East Georgia (Caucasian): “I would like to see the age requirements for police officers who enter the academy. Eighteen to 21 years of age is too young for someone to have a badge and a gun. Between 23 and 25 years of age is a good place to start.”
- Law Enforcement Official, Metro Atlanta (Caucasian): “More community involvement. For example, having police officer liaisons who attend community/neighborhood association meetings on a regular basis.”

#### **D. Youth Viewpoints**

On September 30, 2015, Georgia Appleseed sponsored a focus group meeting with students from a West Georgia high school. Twenty students attended the meeting. All of the students were African American; 60 percent female, 40 percent were male. They ranged in age from 15 to 18.

The students were asked: “How would you describe the overall relationship of the police department here in Columbus with the communities that they serve?”

- Female: “I only see them as a form of protection around here. I don’t really see police brutality in [my community] nor do I hear about it. But I really do think that they should be more involved so that I just won’t see them patrolling the area but interacting with the community. Maybe they could host an event or something just to bring the kids out and let the kids know that we don’t just patrol the area we’re also your friend. We’re your protectors. So I really think that they should do more events or create events.”
- Female: “Most people steer clear of the police because you see all these things on social media and they don’t want those types of things to happen to them, so they avoid interactions with law enforcement.”
- Male: “I would describe the relationship between police here and young people as like there is a disconnect between law enforcement and people around the community.”
- Male: “Personally I have police officer friends and we have a good connection. People are afraid of police officers because they don’t have that connection with them.”
- Male: “People here keep their distance from the police.”
- Male: “If I had to explain the relationship between law enforcement and the community I would use the word fearful. And, I think it goes both ways too. From the police’s perspective they’re thinking the same thing they’ve seen certain black people that just act ignorantly, foolishly and so they may assume – they don’t know for a fact that one person is different from the next one. There’s fear on both sides.”
- Female: “I feel like the relationship between law enforcement and the community depends on the person dealing with law enforcement, their previous or present experiences with the police. When I was in ROTC I know a police officer came and talked about issues with police brutality in the news, and that our police department was making an effort to be there for young people. He said: ‘we’re your friends, we’re on your side.’ ”
- Female: “In the past, before all the police brutality was in social media, everybody used to think of police as like a hero in a way; but now when you hear the word police you kind of get scared as you don’t want to have no dealings with them.”
- Male: “So after what happened in Ferguson we tried to question our police officers on what they’re doing and so it’s kind of like they get a bad reputation already just because we see one of the police officers down there we think ‘oh all of them are bad’ just because we generalize everything.”

- Male: “I think that we kind of look down on the police now because we see stuff on the news and I think we can’t quite understand it and we only see the bad stuff about it. I think that our relationship is we only speak to police when we have to or need to. I think other interactions would help us be more comfortable to talk to the police and we won’t feel like snitches.”
- Female: “From my personal experience, me and mother could be sitting out on the porch and then the police come by the corner and we have to go in the house...lock the doors, close all the blinds. I really don’t understand it. I didn’t do anything, right?”
- Male: “So when one police get stereotype, so like when one police officer do something stupid they think everybody stupid, but it’s not like that, about the behavior and the situation and how they handle it.”
- Female: “I’ve always been like an activist at heart and I wanted to go to a march and my mother said I should not go down there and be a part of that because you know how police are ... and then with police brutality in the news and everything it just makes the situation worse and the trust is gone. There is like a divide between the police and law enforcement and the community and yes, the elders do just to say you know learn how to hate because you don’t come into the world hating people. You’re taught how to hate someone. Then when your parents and the people that you trust the most that love and care about you and they’re telling you that you don’t need to be involved with something like that because you know how police are you might get hurt and everything like that. So that’s what you’re thinking about. Maybe I just need to be quiet. But you can’t be quiet. You have to be involved in it.”
- Male: “So if your parents are constantly telling you every day watch out for the police, and you see it on social media: police brutality and the fact that the police are not prevalent in our community, that may make you feel like you don’t want to associate with them.”

The students were asked if they knew what community policing was.

- Male: “Community policing is where the police try to get a relationship within the community and not so much of the law enforcement side, but try to build the community up, where its kind of there, the center of it, as in positive not just negative, but positivity, trying to give relationships personal on a more personal standpoint.”
- Male: “Our police in our neighborhood interact with us like he makes sure that we’re okay. He lives in our neighborhood – he lives down the street and he makes sure that we are safe.”
- Female: “In my school, I see police officers in the hallways and so I’m not personally scared of them, you know, because I’m not troublesome child, but I just would like them to be like a little more friendly. I guess you could say like, at least, let me know your name if you’re protecting me.”
- Female: “I have seen a lot of police officers living in our neighborhood but as a child growing up my relationship with police officers was good, we had programs like DARE, we had a lot of programs with the police officers telling us stuff how to protect ourselves, how to stay away from drugs, alcohol but when I came to High School, for some reason it stopped.”
- Female: “With what’s on social media our relationship with the police officer is gone. A police officer cannot come to anyone’s house and just be like, ‘Hey, how you doing?’ without a person thinking it’s something bad is going on.”

The students were asked who should investigate police involved shootings involving members of the community.

- Female: “They shouldn’t be allowed to investigate themselves ‘cause they can tamper with the evidence and might change it around.”
- Female: “I personally think that the community or witnesses should do the investigation, or should at least like give their insight on what happened. Because you have to think about it: most police officers in a certain community they are all friends. I really don’t even think that anybody would testify against their own co-worker. I’m not sure who is over the police officers and who else could investigate, but I sincerely think that they are in it for them.”
- Male: “I think that the FBI or someone above the police should investigate police investigations.”
- Male: “I think just the police investigating on each other is kind of like, it goes against, like, checks and balances, because we grew up to believe in due process. We can’t be our own judge so why should they be their own judge.”
- Female: “I feel like justice has no price tag and you can’t put a limit on it and if it takes extra measures to accomplish justice then you should take those extra measures no matter what cost you have to pay. If there’s a will, there’s a way.”

## **E. Conclusion**

The individuals interviewed for this report spoke about their roles in, experiences with, and opinions about potential changes in law or policy that would improve law enforcement community relations in ways that would significantly reduce the likelihood of future encounters resulting in death or severe bodily harm to community members. They held many opinions on the issues and made a number of recommendations regarding policy and legislative action that might be taken to improve those relationships in Georgia. The stakeholders provided thoughtful, valuable and candid comments about what is working well, and what could be improved on these issues in the State.

Most stakeholders did not identify a widespread policy or culture in Georgia of disparate or unfair treatment of various types of citizens from other types of citizens in the State, relative to community/law enforcement relations. There is, however, interest (and concern) among those interviewed about improving those relationships in Georgia, while maintaining the safety of the community and law enforcement officers. The majority of stakeholders welcomed efforts to review and revise policies and legislation that would help Georgia meet those goals.



## IV. Taking Action – Toward Law & Policy Reform

Based on our analysis of current law and policy and on the input received to date from stakeholders as outlined in this report, Georgia Appleseed recommends the following actions that we believe will further the goal of enhancing law enforcement community relations in Georgia.

### Key Policies

- A. Standard Operating Procedures.** Effective management of any organization—governmental, business or nonprofit—includes the development, adoption, review and revision and implementation of clearly articulated standard operating procedures. The GACP (and the other collaborating law enforcement agencies) should be commended for their efforts to develop and support the voluntary Georgia Law Enforcement Certification Program, which includes a requirement for adopting and maintaining a wide range of SOPs.

However, only a relatively small percentage of Georgia law enforcement agencies have sought and obtained certification. It may well be that a substantial number of additional departments have appropriate standards in place but have simply elected not to undergo the verification and assessment process involved in certification. We understand that there are relatively modest direct costs associated with obtaining certification but also that developing and maintaining effective SOPs require the commitment of internal management resources as well.

We recommend that the General Assembly assess the extent to which Georgia law enforcement agencies have in place SOPs that are substantially equivalent to those recommended by the GACP. To the extent that it is determined that a significant number of agencies do not have adequate policies in place, the General Assembly should consider options designed to ensure that such deficiencies are corrected. This could potentially include mandating participation in the Georgia Law Enforcement Certification Program.



Proposed  
incorporation into  
new or revised  
State Bill

- B. Public Access.** We recommend that the General Assembly enact legislation requiring each law enforcement agency that maintains a website to provide public access to copies of all standard operating procedures on such website. To the extent that a department does not maintain a website, the law should require that such department make copies of its SOPs available at a public location such as a public library. The law should allow departments to withhold from public access those operating procedures the disclosure of which may put the safety of law enforcement personnel or the public in jeopardy.



- C. Clarifying Use of Force Law.** The need for each law enforcement agency to have a clearly articulated policy on the use of deadly force cannot be disputed. The recently issued Ferguson Commission Report<sup>214</sup> urged the revision of such policies:

“... to authorize only the minimal amount of force necessary:

- To protect citizen and officer safety,
- That is proportional to the incident,
- That brings an unlawful situation safely and effectively under control, and
- That preserves the constitutional and human rights of the citizen.<sup>215</sup>

The GAPC Sample Policy on this topic and the departmental use of force SOPs that we have reviewed employ different language but the basic thrust of the policies is the same--deadly force may only be used if the police officer reasonably believes that the officer or a third party is immediately threatened with death or serious bodily injury.

The “plain language” of Code Section 17-4-20(b) dealing with suspected felons, however, authorizes the use of deadly force in broader circumstances. In addition, Code Section 17-4-20(d) prohibits law enforcement agencies from adopting “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.”

Therefore, we recommend that the General Assembly evaluate Code Section 17-4-20(b) to determine if such a statute is necessary in light of the existing “self-defense” statutory provisions. If the General Assembly concludes that such a law is necessary, then we recommend that amendatory language be developed to clarify the scope of this law so that it does not authorize the use of deadly force except in circumstances when the officer reasonably believes that the suspect poses an immediate threat of death or great bodily injury to the officer or others.



## Training

- D. **Training Curriculum Review and Revision.** A recurring theme among our interview participants was that, while having good SOPs is very important, it is even more critical that police officers receive the necessary level of training in implementing these procedures. We recommend that the General Assembly enact legislation directing the Georgia Peace Officers Standards and Training Council to review and revise the basic and annual law enforcement required training. We urge that this review be comprehensive and be designed to answer the following question: What course content and educational delivery methods are necessary to assure that Georgia’s law enforcement officers will be trained to meet the challenges critical to modern policing while assuring officer safety and wellness? Focus training topics should include, but not be limited to (1) use of force including utilizing modern interactive simulation tools, (2) conflict management and de-escalation techniques and (3) implicit bias and cultural responsiveness.



The legislation should create a multidisciplinary advisory council similar to the CIT Advisory Council to participate in the assessment process and should require that the review be completed so that any revised training requirements will be in place and effective as of July 1, 2017.

## Data

- E. **Expanded Collection of Detention Information.** We believe that internal management oversight and external accountability for law enforcement agencies (indeed most organizations) are critically dependent upon the use of accurate performance data. Substantial arrest data is currently being collected and reported. Incidents of concern, however, can often be an outgrowth of detentions that are short of arrest. In addition, there is worry that these detentions may have adverse impacts on community relations if they are, or are perceived to be, disproportionately imposed on minority men and women.

We know, however, that there may well be logistical and cost challenges associated with expanding requirements for data collection and reporting. Therefore, we recommend that the Criminal Justice Reform Council assess the feasibility and cost of expanding law enforcement data collection requirements to provide for the comprehensive collection and reporting of – and public access to – demographically disaggregated data on citizen detentions.



Proposed Policy  
Change



- F. **Reporting of Incidents of Concern.** We recommend that the General Assembly enact legislation mandating immediate (effective 7-1-16) monthly reporting, including detailed data on all incidents of concern and require the publication of reports of such incidents on a state-wide basis and for each individual department every six months, with the first report (for July-December 2016) due on or before February 1, 2017. The data could be collected and reported by GCIC, by the Administrative Office of the Courts, or another entity as determined by the General Assembly.



- G. **Department Demographics.** We recommend that the General Assembly enact legislation requiring that each law enforcement agency annually report and make publically available personnel demographics (age, race/ethnicity and gender) for the department as a whole and for senior leadership beginning by no later than December 31, 2016.

## Community Engagement and Outreach

- H. **Empowering Community Partners.** We join many others in deeming community policing to be critical to enhancing law enforcement community relations. We also believe that mechanisms designed to provide a clear opportunity for citizen concerns and input to be heard and acted upon are very important. We are not sure, however, that the development of state level mandates in this area makes sense given the vast diversity of the communities in Georgia. We believe that this is very likely a situation where there is no “one size fits all” response.

We were particularly influenced by the comments of one of the law enforcement participants, in our October 28 stakeholder forum, who emphasized that community policing was a “philosophy and not a program.” Accordingly, we are committed to continue exploring ways in which Georgia Appleseed can assist local community groups to partner with law enforcement in ways that will encourage the expansion of the community policing philosophy in Georgia.

- I. **Post-Incident Communication.** In addition to the overall benefits that community engagement may provide in building trust among community members and law enforcement, effective community engagement is also vitally important in the immediate aftermath of an incident of concern. We explored with the stakeholders, in particular, the question of when and how law enforcement should share information about the incident during the course of the investigation. Prompt and transparent disclosure of information to the public can, on the one hand foster trust in the fairness of the investigative response. On the other hand, premature disclosure of information can lead to charges of an unwarranted “rush to judgment.” We suggest that the Georgia Association of Chiefs of Police consider developing a model policy for the certification program that outlines best practices for disclosure of critical incident information to the public as well as to the family of the deceased or injured community member. Engaging prosecutors, representatives of the media and community members in the discussion could greatly enhance such an effort.



## Investigation Responsibility

- J. **Independent Investigation.** We do not discount the possibility, even the probability, that police departments can objectively investigate incidents of concern involving one of their own officers. We are convinced though that the community perception of an inherent conflict of interest in these situations poses too much of a risk of undermining the necessary trust that community members should have in our justice system. Therefore, we recommend that the General Assembly enact legislation requiring that incidents of concern be investigated by an independent, uninvolved law enforcement entity.



## Making the Charging Decision



K. **Special District Attorney.** We recognize that local district attorneys are fully capable of making objective charging decisions involving incidents of concern. There is a public perception of a potential conflict of interest, however, because the police department of the involved officer works with the prosecutor on a daily basis. **This leads us to recommend that the General Assembly enact a law requiring the appointment of a special independent district attorney in all such cases.**

L. **Grand Jury Participation.** The unique grand jury participation rights afforded to peace officers in Georgia find their genesis in a Nineteenth Century law that was designed to protect certain local elected officials who were being charged under a then new law that prohibited malfeasance in office. Note that this law made its violation a misdemeanor and the only sanction provided was removal from office. In 1975, these rights were made available to mostly unelected peace officers for all crimes alleged to have occurred in the line of duty, including the most serious felonies. The stated rationale for this expansion of grand jury participatory rights was the potential for frivolous charges which could embarrass the officer and the officer's family.

The purpose of the grand jury is to decide whether there is probable cause to believe that a crime has been committed so that the accused must face trial on the ultimate question of guilt or innocence. The current law essentially can convert the grand jury proceeding into a proceeding in which the accused peace officer can powerfully assert innocence in the last words the jurors hear before deliberations without being subject to cross examination or rebuttal. We must conclude that any risk of a high volume of frivolous prosecutions (especially for incidents of concern) is so remote<sup>216</sup> that these concerns and those of potential personal embarrassment cannot today justify providing these unique grand jury participatory rights to peace officers. **Accordingly, we recommend that the General Assembly repeal Code Section 17-7-52.**



# Notes

## (Endnotes)

- <sup>1</sup> For a review of the Theory of Change, see <https://gaappleseed.org/media/docs/Theory%20of%20Change%20040115.pdf>.
- <sup>2</sup> *Investigation of the Ferguson Police Department*, United States Department of Justice Civil Rights Division (March 4, 2015), available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).
- <sup>3</sup> *Forward Through Ferguson-A Path Toward Racial Equality* (September 2015) [hereinafter “Ferguson Commission Report”] available at [http://forwardthroughferguson.org/wp-content/uploads/2015/09/092115\\_FergusonCommission-Report.pdf](http://forwardthroughferguson.org/wp-content/uploads/2015/09/092115_FergusonCommission-Report.pdf).
- <sup>4</sup> *Interim Report of The President’s Task Force on 21<sup>st</sup> Century Policing 1* (March 2015), available at [http://www.cops.usdoj.gov/pdf/taskforce/Interim\\_TF\\_Report.pdf](http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf).
- <sup>5</sup> *Id.*
- <sup>6</sup> *Final Report of The President’s Task Force on 21<sup>st</sup> Century Policing* (May 2015), available at [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf).
- <sup>7</sup> *Id.* at 19-30.
- <sup>8</sup> *Id.* at 3.
- <sup>9</sup> *Id.* at 4.
- <sup>10</sup> *Id.*
- <sup>11</sup> *Id.* at 1.
- <sup>12</sup> Georgia law defines the term “peace officer” to mean : “An agent, operative, or officer of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer, 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, and the prevention, detection, or investigation of crime ...” O.C.G.A. § 35-8-2(8)(A). In this report, we use the terms “peace officer,” “police officer,” and “law enforcement officer” interchangeably to include all persons who fall within the definition of “peace officer.”
- <sup>13</sup> An analysis of when law enforcement use of force may violate federal civil rights laws is found at p. 27 *infra*.
- <sup>14</sup> O.C.G.A. § 17-4-20(b).
- <sup>15</sup> See *Williams v. Bohrer*, 530 F.2d 891 (11<sup>th</sup> Cir. 2013).
- <sup>16</sup> See *Allen v. City of Atlanta*, 510 S.E.2d 64 (Ga. App. 1998).
- <sup>17</sup> O.C.G.A. § 16-3-21(a). The cross reference to Section 16-3-23 relates to special rules for the defense of a home invasion and is not applicable to this assessment.
- <sup>18</sup> *Bunn v. State*, 667 S.E.2d 605 (Ga. 2008).
- <sup>19</sup> *Id.* at 608.



<sup>20</sup> *Id.* The preponderance of the evidence test means that the accused must demonstrate that it was more likely than not that the use of deadly force was justified. If the defendant fails to meet this burden, he or she can still raise a self-defense claim at trial. If there is any evidence to support such a defense, then the prosecution has the burden of disproving the defense beyond a reasonable doubt. *Id.*

<sup>21</sup> <http://www.gachiefs.com/statecertification/index.htm>.

<sup>22</sup> *Id.*

<sup>23</sup> [http://www.gachiefs.com/statecertification/pdfs/2014\\_10\\_5thEdition.pdf](http://www.gachiefs.com/statecertification/pdfs/2014_10_5thEdition.pdf) (“GACP Standards Manual”).

<sup>24</sup> <http://www.gachiefs.com/statecertification/index.htm>.

<sup>25</sup> [http://www.gachiefs.com/statecertification/StateCert\\_CertifiedAgencies.htm](http://www.gachiefs.com/statecertification/StateCert_CertifiedAgencies.htm); Personal communication from Frank Rotondo, Executive Director, Georgia Association of Chiefs of Police, to Robert Rhodes, Director of Projects, Georgia Appleseed (September 17, 2015). A similar program is available through the Commission on Accreditation for Law Enforcement Agencies (“CALEA”), a non-profit credentialing authority created in 1979 by the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs’ Association, and the Police Executive Research Forum. Twenty-eight Georgia law enforcement agencies maintain CALEA accreditation and some others are in the process of seeking accreditation. The number of CALEA accredited departments is limited at least in part by the fact that associated costs are much higher than those involved with obtaining GCPA certification. Personal communication from Frank Rotondo, Executive Director, Georgia Association of Chiefs of Police, to Robert Rhodes, Director of Projects, Georgia Appleseed (September 17, 2015).

<sup>26</sup> [http://www.gachiefs.com/DeptResrcs\\_SamplePolicyManual.htm](http://www.gachiefs.com/DeptResrcs_SamplePolicyManual.htm) (“GACP Sample Policy Manual”).

<sup>27</sup> It is also possible that some of the individual operating policies adopted by Georgia law enforcement agencies have been based on or influenced by model policies developed by the International Association of Chiefs of Police (“IACP”). Unfortunately only IACP member may freely access copies of the model policies. See <http://www.theiacp.org/Model-Policies-Alphabetical-Order>.

<sup>28</sup> GACP Standards Manual, Standard 1-11 at p. 8.

<sup>29</sup> The cited statutory provision reads: “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.”

<sup>30</sup> *Id.*

<sup>31</sup> GACP Sample Policy Manual, Ch. 11 at p.5 (emphasis in original).

<sup>32</sup> Text *supra* at pp. 13-14.

<sup>33</sup> DeKalb County Police Department SOP 4-6 at p.1 (October 2014). A similar caveat is found in the GACP Sample Policy Manual, Chapter 1 at pp.1-2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* SOP 4-6.1 at 5 (emphasis in original).

<sup>36</sup> Griffin Police Department SOP 1.3.1 at p. 7 (2015).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1.3.2 at p. 8

- <sup>39</sup> *Id.* at 1.3.4 at pp. 8-10.
- <sup>40</sup> Dunwoody Police Department SOP A-8 (July 1, 2015).
- <sup>41</sup> *Id.*, Sec. IV.B.2. at p. 2.
- <sup>42</sup> *Id.*, Sec. IV.B.3. at p. 2.
- <sup>43</sup> Athens-Clarke County Police Department Written Directive No. A3/01/01, Sec. B.5 (June 15, 2012).
- <sup>44</sup> *Cf.* Ga. Const. art. I, § 1, ¶ XIII with U.S. Const. amend. IV; *see also State v. Walker*, 764 S.E.2d 804, 807 n.3 (Ga. 2014) (“[O]ur Constitution protects against ‘unreasonable’ searches and seizures just as the Fourth Amendment does.” (citing *Salmeron v. State*, 632 S.E.2d 645 (Ga. 2006))).
- <sup>45</sup> *Kaupp v. Texas*, 538 U.S. 626, 629 (2003) (citations omitted).
- <sup>46</sup> *See State v. Allen*, No. A14A1837, 2015 WL 734066, at \*2 (Ga. Ct. App. Feb. 23, 2015) (citing, *inter alia*, *Terry v. Ohio*, 392 U.S. 1, 21(III), (1968), and *State v. Walker*, 764 S.E.2d 804 (2014)); *accord United States v. Waksal*, 709 F.2d 653, 657-58 (11th Cir. 1983).
- <sup>47</sup> *State v. Harris*, 581 S.E.2d 736 (Ga. App. 2003) (“[S]o long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and no reasonable suspicion is required . . .”).
- <sup>48</sup> *Allen*, No. A14A1837, 2015 WL 734066, at \*2 [citing, *inter alia*, *Jones v. State*, 727 S.E.2d 456 (Ga. 2012) (noting that a first-tier encounter may become a seizure when “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave”)].
- <sup>49</sup> One manner in which an officer can make a show of authority is the use of the flashing blue lights on a police vehicle. *See Brown v. State*, 522 S.E.2d 41, 42 (Ga.1999).
- <sup>50</sup> *State v. Walker*, 764 S.E.2d 804, 806 (Ga. 2014) (citations omitted); *see also Allen*, 2015 WL 734066 at \*2 (finding a second-tier encounter where an officer approached an individual and “directed her to accompany him outside”).
- <sup>51</sup> *Hayes v. Florida*, 470 U.S. 811, 816 (1985) (citations omitted).
- <sup>52</sup> *Id.*
- <sup>53</sup> *Brown v. State*, 686 S.E.2d 793, 796 Ga. App.(2009) (holding that no reasonable suspicion was present where the only objective manifestations were that the individual walked faster away from and ignored the police officer, was present in an area known for criminal activity, cut through a parking lot, and wore a hooded sweatshirt and jacket during February); *compare Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000) (holding that a person’s unprovoked flight in a high crime area when a police officer approaches provides reasonable suspicion for a stop).
- <sup>54</sup> *Florida v. Bostick*, 501 U.S. 429, 437 (1991).
- <sup>55</sup> *Brown*, 686 S.E.2d at 796 (citations and internal punctuation omitted).
- <sup>56</sup> *Arizona v. Johnson*, 555 U.S. 323 (2009).
- <sup>57</sup> *United States v. Arvizu*, 534 U.S. 266 (2002).
- <sup>58</sup> *Johnson*, 555 U.S. at 327.
- <sup>59</sup> *Maryland v. Wilson*, 519 U.S. 480 (1997).

- <sup>60</sup> *Michigan v. Summers*, 452 U.S. 692, 705 (1981).
- <sup>61</sup> *Id.* at 702-03.
- <sup>62</sup> *Hayes*, 470 U.S. at 816.
- <sup>63</sup> *United States v. Harrell*, No. 14-10559, 2015 WL 1134800, at \*1-2 (11th Cir. Mar. 16, 2015) (internal citations and punctuation omitted).
- <sup>64</sup> *Riley v. California*, 134 S. Ct. 2473, 2482, 189 L. Ed. 2d 430 (2014) (citing *Weeks v. United States*, 232 U.S. 383 (1914)).
- <sup>65</sup> *Id.* (citations omitted).
- <sup>66</sup> *Riley*, 134 S. Ct. at 2482, 189 L. Ed. 2d 430 (citing *Chimel v. California*, 395 U.S. 752 (1969)).
- <sup>67</sup> *Id.* (citing *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L.Ed.2d 485 (2009)).
- <sup>68</sup> *Terry*, 392 U.S. at 30.
- <sup>69</sup> *Johnson*, 555 U.S. at 327.
- <sup>70</sup> *Michigan v. Long*, 463 U.S. 1032 (1983).
- <sup>71</sup> GACP Sample Policy Manual, Ch. 8.
- <sup>72</sup> *Id.*, Ch. 9.
- <sup>73</sup> Dunwoody Police Department SOP P-14 (July 1, 2014).
- <sup>74</sup> Griffin Police Department SOP 20.13.1.
- <sup>75</sup> Treatment Advocacy Center, *Eliminating Barriers to the Treatment of Mental Illness-Deinstitutionalization*, available at <http://www.treatmentadvocacycenter.org/a-failed-history>. See also Mental Illness Policy Org., *250,000 Mentally Ill are Homeless*, available at <http://mentalillnesspolicy.org/consequences/homeless-mentally-ill.html> and M. Williams, “Grady loses \$10M a year treating the uninsured while the burden on law enforcement grows,” *Atlanta Journal-Constitution* (September 24, 2015) at A-1, A-6. But see S. Bagenstos, *The Past and Future of Deinstitutionalization Litigation*, 34 CARDOZO LAW REV. 1, available at <http://www.cardozolawreview.com/content/34-1/Bagenstos.34.1.pdf>.
- <sup>76</sup> DeKalb County Police Department SOP 3-4.6.
- <sup>77</sup> *Id.* 3-4.6A.
- <sup>78</sup> Griffin Police Department SOP 39.2.2.
- <sup>79</sup> Dunwoody Police Department SOP P-12 (September 15, 2015).
- <sup>80</sup> *Id.*, Sec. II at p.1.
- <sup>81</sup> *Id.*, Sec. III.A. at pp.1-4.
- <sup>82</sup> *Id.*, Sec. III.C. & D. at pp. 4-6.
- <sup>83</sup> Griffin Police Department SOP 23.2.1.
- <sup>84</sup> *Id.* 23.2.2.
- <sup>85</sup> *Id.* 23.2.3.

- <sup>86</sup> DeKalb County Police Department SOP 4-15.38.
- <sup>87</sup> *Id.* 4-15.38A.
- <sup>88</sup> Approximately 700 law enforcement departments in Georgia are eligible to apply for certification. Personal communication from Frank Rotondo, Executive Director, Georgia Association of Chiefs of Police, to Robert Rhodes, Director of Projects, Georgia Appleseed (September 17, 2015).
- <sup>89</sup> O.C.G.A. §§ 35-8-1 to 35-8-26.
- <sup>90</sup> *Id.* § 35-8-7.
- <sup>91</sup> *Id.* § 35-8-8.
- <sup>92</sup> *Id.*
- <sup>93</sup> *Id.* § 35-8-9.
- <sup>94</sup> *Id.* § 35-8-7(15).
- <sup>95</sup> *Id.* § 35-8-21.
- <sup>96</sup> *Id.* § 35-8-16.
- <sup>97</sup> *Id.* § 35-8-7(16).
- <sup>98</sup> <http://www.gpstc.org/training-divisions/basic-training-division/basic-police-officer-training/>.
- <sup>99</sup> <https://gbi.georgia.gov/crisis-intervention-team>.
- <sup>100</sup> <https://gbi.georgia.gov/questions-frequently-asked-law-enforcement-officers>.
- <sup>101</sup> *Id.*
- <sup>102</sup> The training curriculum can be found at: <http://www2.nami.org/Template.cfm?Section=cit2&template=/Content-Management/ContentDisplay.cfm&ContentID=63814>.
- <sup>103</sup> “Georgia Angle” available at <http://tablet.olivesoftware.com/Olive/Tablet/AtlantaJournalConstitution/SharedArticle.aspx?href=AJC%2F2015%2F08%2F17&id=Ar00103>.
- <sup>104</sup> See Banks, et al., Arrest-Related Deaths Program Assessment, RTI International (March 2015), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5260>; Banks, et al., Arrest-Related Deaths Program: Data Quality Assessment, RTI International (March 2015), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5260>.
- <sup>105</sup> <http://www.nytimes.com/2015/08/12/us/data-on-use-of-force-by-police-across-us-proves-almost-useless.html>.
- <sup>106</sup> O.C.G.A. § 35-3-31(a).
- <sup>107</sup> *Id.*
- <sup>108</sup> The description of the UCR program is paraphrased from the program description supplied by GBI at <http://gbi.georgia.gov/gbi-crime-statistics-database>.
- <sup>109</sup> See GBI Crime Statistics Database, available at <https://gbi.georgia.gov/gbi-crime-statistics-database>.

- <sup>110</sup> Utah Code § 77-7-8.5 (2014); See R. Balko, “Data show that in Utah, SWAT-style tactics are overwhelmingly used to serve drug warrants,” *Washington Post* (August 17, 2015), available at <https://www.washingtonpost.com/news/the-watch/wp/2015/08/17/data-show-that-in-utah-swat-style-tactics-are-overwhelmingly-used-to-serve-drug-warrants/>.
- <sup>111</sup> Utah Code § 77-7-8.5(2).
- <sup>112</sup> *Id.* § 77-7-8.5(1)(a)(i). A “tactical group is defined as “... a special unit, within a law enforcement agency, specifically trained and equipped to respond to critical, high-risk situations.” *Id.* § 77-7-8.5(1)(b).
- <sup>113</sup> *Id.* § 77-7-8.5(2).
- <sup>114</sup> *Id.* § 77-7-8.5(6)(b).
- <sup>115</sup> *Id.* § 77-7-8.5(6)(c).
- <sup>116</sup> Utah Comm. on Criminal and Juvenile Justice, *2014 Law Enforcement Transparency Annual Report* (August 2015), available at [http://libertasutah.org/drop/sb185\\_2014.pdf](http://libertasutah.org/drop/sb185_2014.pdf).
- <sup>117</sup> Y. Alcindor, “NYPD making major changes in use-of-force rules,” *USA Today* (October 1, 2015), available at <http://www.usatoday.com/story/news/nation/2015/10/01/reports-nypd-to-make-change-use-of-force-guide-lines/73145198/>.
- <sup>118</sup> *Id.*
- <sup>119</sup> *Id.*
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- <sup>190</sup> *Surh v. State*, 303 Ga.App. 380,384 (Ga. Ct. App. 2010).
- <sup>191</sup> O.C.G.A. §§ 17-7-50, 17-7-70. Some relatively minor crimes may be prosecuted based upon a law enforcement summons or citation without the need for a prosecutorial accusation or grand jury indictment. See, e.g., *id.* § 17-7-72.
- <sup>192</sup> O.C.G.A. § 17-7-52; *Dudley v. State*, 273 Ga. 466, 466 (Ga. 2001).
- <sup>193</sup> Available at <http://www.pacga.org/site/content/321>. The summary discussion of the grand jury process in this report is based on this document.
- <sup>194</sup> *Id.* § 45-11-4(g).
- <sup>195</sup> 65 S.E. 1089 (Ga. App. 1909). The development of the law is also chronicled in R. Sentell, *Georgia Local Government Officials and the Grand Jury*, 26 GA. B. J. 50 (1989-90).
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- <sup>197</sup> *Id.*
- <sup>198</sup> *Sweeney v. Balkcom*, 358 F.2d 415, 417 (5<sup>th</sup> Cir. 1966)(citations omitted).
- <sup>199</sup> *Id.* at 418.
- <sup>200</sup> *Id.* at 419. The court also noted that the wisdom of the law had been challenged and referenced a June 1964 editorial comment in the Atlanta Journal which stated, in part, that the law "... reads like something left over from Runnymede." *Id.* at 417 n9.

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- <sup>209</sup> *Williams v. State*, 546 S.E.2d 522 (Ga. 2001).
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- <sup>211</sup> *Id.* at 102.
- <sup>212</sup> *State v. Smith*, 688 S.E.2d 348 (Ga. 2010).
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- <sup>214</sup> Note 3 *supra*.
- <sup>215</sup> Ferguson Commission Report at 26.
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