

Notes – Senate Study Committee on Law Enforcement Reform
September 24, 2020

Good Afternoon,

My name is Butch Ayers, and I am the Executive Director of the Georgia Association of Chiefs of Police. My background consists of a 35+ year career in law enforcement, including my last five years as the chief of police for the Gwinnett County Police Department

I want to speak our organization and what we do.

The Georgia Association of Chiefs of Police is dedicated to improving the professional delivery of police service to our communities. One of our programs is the **Georgia Law Enforcement Certification Program**.

Certification status represents a significant professional achievement. It acknowledges the implementation of policies and procedures that are conceptually sound and operationally effective. The Certification Program provides a comprehensive blueprint for effective, professional law enforcement. There are approximately 129 standards, in the current Standards Manual Edition. The Georgia Law Enforcement Certification Program works continuously to improve the ability for Georgia's law enforcement agencies to achieve and maintain high standards of professionalism in law enforcement. Out of the approximately 600 + law enforcement agencies in Georgia, 138 have achieved certification through this program. At our recent training conference, the GACP executive board made it a top priority to encourage participation and assist police departments in obtaining state certification. I will provide to the committee the current version of the Certification Standards Manual.

The Georgia Association of Chief of Police also provides training for police chiefs. In addition to two (2) training conferences each year, GACP also provides training for new chiefs in our Chief's Executive Training Course. By law, new chiefs or heads of law enforcement agencies, with the exception of sheriff's (who provide their own training) must attend this training. With the assistance of Director Wigginton's staff at GPSTC, we are currently revalidating the curriculum for the

Chiefs School to make sure that it is relevant and current. The new curriculum should be ready by the first class in 2021.

At this point, I would like to first identify those areas where Georgia is leading, or is among the leaders, in the nation.

Georgia POST Standards

Georgia is doing a number of things better than any other state to ensure we provide the greatest transparency and accountability to our citizens. As previously stated by POST Director Mike Ayers, Georgia is the most aggressive State in the nation to review officer misconduct and decertify officers. Georgia POST Council revokes more officer certifications than any state in the country. In fact, Georgia, Florida and North Carolina account for more than 50% of the total number officers who have their certifications revoked. Until earlier this year, five states, (California, Massachusetts, Hawaii, Rhode Island, and New Jersey) had no authority to revoke officers' certification. Still some can only revoke for felony convictions. Slightly more than half of the states are able to decertify officers for failing to acquire minimum mandated training.

Access to Police / Employee Records

Georgia has some of the most liberal open records laws in the nation. Employees' personnel files, including their disciplinary records, are subject to public review. In addition, employees' emails on department computers and phone logs from department issued cell phones are considered open records as well. To access the information, one simply needs to submit an open record request for the information.

Liability for Failing to Share Negative Information

Also, Georgia law enforcement agencies must provide background investigators from other agencies with any negative information regarding an officer. In 2004, the Georgia Court of Appeals held agencies that withhold negative information regarding an officer to another law enforcement agency conducting a background investigation can be held liable for failing to provide the complete record if it is

linked to future legal claims¹. In addition, public and private employers are “not subject to civil liability for disclosing complete and accurate information to a law enforcement agency in good faith and without malice”.²

Compare this with many states where union contracts permit disciplinary records to be kept confidential and/or erased.³ How can an agency hold an individual accountable when the records from previous infractions are not maintained?

At-Will Employment

While every agency should have processes in place to protect officers from false allegations, poor leadership, and discriminatory practices, Georgia is an ‘at-will’ employment State. Simply stated, employees can be terminated at any time, for any reason, except those protected by Federal and State law.⁴

Many states require agencies to enter collective bargaining agreements with unions that represent officers. As with every agency, most of these officers are hard-working, dedicated individuals. Despite this, labor unions often protect bad officers. One study recently evaluated 656 police union contracts from mid-to-large unionized municipal police departments. Researchers found union contracts allowed a range of one to seven levels of appeal with the median being four appeals.⁵ Even when agency appeals supported the discipline, including termination, some contracts allowed an arbitrator to review and make a final ruling on the disciplinary action. In many of the cases departments have been forced to rehire the officer.

Independent Investigations of Police Use of Deadly Force

Despite media portrayals, law enforcement officers rarely use force. One study by the International Association of Chiefs of Police (IACP) revealed

¹ Govea et al. v. City of Norcross et al. City of Chamblee v. Govea et al. 271 GA. App. 36; 608 S.E.2d 677; 2004, (Decided November 23, 2004)

² O.C.G.A. 35-88-8-(c) (4)

³ <https://www.reuters.com/investigates/special-report/usa-police-unions/>

⁴ It is important to note in the 2020 Legislative Session, the State of Georgia passed HB838 that provided officers to sue individuals or groups who knowingly file a complaint they knew was false when it was filed.

⁵ Rushin, Stephen, “Police Disciplinary Appeals”, University of Pennsylvania Law Review, Vol. 167, No. 3 (Feb. 2019), p.571.

officers used force at a rate of 3.61 times per 10,000 calls. Expressed another way, police did **NOT** use **ANY** force 99.9639% of the time. The rarest of these is the use of deadly force. When this occurs, agency leaders in Georgia recognize the need to have unbiased, independent investigations of these events and therefore request the Georgia Bureau of Investigation (GBI) to conduct the investigation. While this is not mandatory, only a few agencies choose to not call the GBI for these investigations. After the investigation is completed, the Bureau provides a copy to the appropriate district attorney who typically presents it to the Grand Jury for review.

Agencies simultaneously conduct separate administrative investigations to determine if the individual violated the department's policies. This enables agencies to take corrective action when an officer's conduct was not considered criminal but violated the agency's operating procedures.

The use of force is never pretty. Officers' decision to use force often occurs in tense, rapidly evolving circumstances. Evaluation of those actions must be evaluated using a standard of "objective reasonableness" based upon what the officer(s) knew at the time of the incident, without the benefit of 20/20 hindsight.⁶

Calls for Police Reform

As we respond to calls for police reform, please remember the following statement: *"Too often, law enforcement gets scapegoated for broader failures of our society and our criminal justice system"*. I believe that statement was true when it was spoken by in 2015, and I believe that it is true today.

We support continuous self-improvement. It is a critical component of being a professional

We also have a collective responsibility to support those men and women who dedicate their lives to service of their communities. This support must be in the

⁶ Graham V. Conner et al., 490 U.S. at 397 (1989)

form of protecting them from false accusations, providing them with necessary training, and ensure they are provided with equitable compensation systems.

Advocates Suggested Reforms

There have been a number of areas groups have suggested as areas for reform.

Defund the Police – Decisions have consequences. Those communities reducing police funding with no viable alternative to fill the vacuum cause by this action will see severe consequences for defunding their police. Unfortunately, the impact of these decisions will have a greater impact on the most vulnerable in our communities.

Require Body Worn Cameras – Police agencies are supportive of these cameras. Studies show they help to change the behavior of both the citizens and officers. Most complaints are resolved with the footage supporting the officer's response. They also offer a number of other benefits to help improve officers' performance. The problem with these systems is not the initial investment in the camera. The problem is the cost associated with data storage. Compare with buying a cheap printer at Office Depot. While the printer is cheap, you will pay for the ink cartridges.

Ban Chokeholds and Strangle Holds – Georgia has not taught this approach since the 1980's. Most agencies prohibit this technique process. Those that do allow chokeholds, restrict them to those instances when the use of deadly force is authorized. Also, this is the standard that has been implemented by the U. S. Justice Department for those agencies seeking discretionary federal funding.

Require De-Escalation – De-escalation of any situation is always the goal. It is not a specific tool on your tool belt that can be easily used in any situation. De-escalation may work if the subject is responding positively to the efforts to deescalate. The officers are responding to the actions of the subject. The use of force is often a very rapidly evolving, dynamic process. When feasible, officers do try to calm an individual. We agree training should continue to evolve in this area.

Duty to Intervene – If an officer is acting inappropriately, fellow officers should most definitely intervene to stop their behavior. If they don't, steps should be taken to hold all of them accountable.

Use of Force Continuum – The continuum was originally designed as a training aide to explain the appropriate use of force decisions. They are complicated, confusing and not an effective training aide. Compounding the problem, there are dozens of versions of the UOF Continuum. So, which one are departments to use? The best approach to addressing this is the use of judgmental use of force simulators. Unfortunately, these devices are expensive and difficult for most agencies to purchase. Again, the use of force does not occur in a static, controlled laboratory. It usually is rapidly evolving chaotic situations. Things can change in a split second. According to the most recent FBI report on law enforcement officers killed or assaulted, 510 officers were feloniously killed over a ten-year period. 76% of those officers never fired their service weapon in self - defense.

Our law enforcement agencies have been the dumping grounds for many of other governmental agencies' failures. The real issue that should be evaluated is the other agencies / systems that have failed to address these social problems.

Mental Health. Studies indicate that approximately 18% of adults in the United States experience a mental illness every year and four percent of the population has experienced a severe mental illness annually. Police agencies across the state repeatedly respond calls involving mental health consumers in crisis. Mental health patients end up becoming wards of the criminal justice system due to the fact that mental health systems cannot or will not provide treatment or care for these patients. While these patients may have violated the law, they end up becoming members of the secondary mental health system: city / county jails and state prisons.

When interacting with mental health consumers in crisis, officers in Georgia are restricted from carrying them for treatment unless the individual commits a criminal offense. Georgia has no process empowering officers to carry individuals who are a threat to themselves or others for treatment without a criminal offense. We have police agencies reporting their officers respond to calls of suicidal individuals who refuse treatment. They leave and shortly afterwards the person attempts or successfully kills themselves.

When officers do make an arrest after the consumer's behavior has degenerated to a criminal offense, officers are accused of criminalizing mental illness. When

officers arrest and carry, or convince, an individual to go to a facility for help, some hospitals in this state refuse to accept or treat them.

In cases where the consumers go to a medical facility and an involuntary commitment order is signed, the hospital must provide a full medical examination to include drug screenings prior to being transported to mental health facility. Afterwards, sheriff's deputies transport them across the state to a facility

Nevertheless, dealing with persons who are severely mentally ill can be dangerous. These encounters can be dangerous for the police, mental health consumers, and the public. People with mental illnesses killed law enforcement officers at a rate of 5.5 times greater than the rest of the population. People with severe mental illnesses are killed by police in justifiable homicides at a rate nearly four times greater than the general public. In the end, these events are emotionally challenging for the officers involved and require lengthy investigations, scrutiny, and criticism.

Recruitment and Retention

The persons we are seeking as officers have the same knowledge, skills and abilities most other employers are seeking. We expect our officers to have exceptional judgement, oral and written communication skills, problem-solving abilities, conflict resolution skills, deductive and critical thinking skills, understanding of the criminal/traffic codes, life-saving skills. Officers are expected to have calm temperament, free of bias and prejudice, and in good physical shape.

They are expected to perform with perfection to make life changing decisions with limited information in rapidly evolving events. These incidents often occur in the worst of environments including limited lighting, multiple distractions, extreme temperatures.

The recruitment and retention of officers is critical for all our communities. Agencies across the state have reported the number of applications received for vacant positions have considerably diminished in the past few months.

Many officers are choosing to leave the field for other opportunities or retire earlier. This is coming at a huge financial and operational cost to the taxpayers. With all the negative rhetoric regarding law enforcement, it has become even

harder to attract these individuals. We cannot attract people to this profession if we continue to vilify this profession.