

The Senate Judiciary Committee offered the following substitute to SB 66:

A BILL TO BE ENTITLED
AN ACT

To amend Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to change the provisions relating to registration requirements applicable to certain sex offenders; to change the definitions of certain terms; to provide that registration requirements applicable to certain sex offenders shall apply to persons sentenced pursuant to Article 3 of Chapter 8 of this title, relating to first offenders; to provide procedures for registration; to provide for the registration of certain sex offenders convicted in tribal court; to change certain provisions relating to the requirement that sex offenders register with sheriffs; to change certain requirements relating to registration; to require additional information with respect to such registration; to change certain provisions relating to duties of the Georgia Crime Information Center; to change the provisions relating to what effect the discharge of a defendant without adjudication of guilt under laws applicable to first offenders has on a person's civil rights or liberties; to provide for severability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended by striking in its entirety Code Section 42-1-12, relating to required registration of certain sex offenders, and inserting in lieu thereof a new Code Section 42-1-12 to read as follows:

"42-1-12.

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

(1) 'Appropriate state official' means:

(A) With respect to an offender who is sentenced to probation without any sentence of incarceration in the state prison system or who is sentenced pursuant to Article 3 of Chapter 8 of this title, relating to first offenders, the Division of Probation of the Department of Corrections;

(B) With respect to an offender who is sentenced to a period of incarceration in a prison under the jurisdiction of the Department of Corrections and who is subsequently

1 released from prison or placed on probation, the commissioner of corrections or his or
2 her designee; and

3 (C) With respect to an offender who is placed on parole, the chairperson of the State
4 Board of Pardons and Paroles or his or her designee.

5 (2) 'Board' means the Sexual Offender Registration Review Board.

6 (3) 'Conviction' includes a final judgment of conviction entered upon a verdict or finding
7 of guilty of a crime or upon a plea of guilty, which includes a plea of nolo contendere.

8 A ~~Unless otherwise required by federal law,~~ a defendant who is discharged without
9 adjudication of guilt and who is not considered to have a criminal conviction pursuant to
10 Article 3 of Chapter 8 of this title, relating to first offenders, shall ~~not~~ be subject to the
11 registration requirements of this Code section.

12 (4)(A) 'Criminal offense against a victim who is a minor' means any criminal offense
13 under Title 16 or any offense under federal law or the laws of another state or territory
14 of the United States which consists of:

15 (i) Kidnapping of a minor, except by a parent;

16 (ii) False imprisonment of a minor, except by a parent;

17 (iii) Criminal sexual conduct toward a minor;

18 (iv) Solicitation of a minor to engage in sexual conduct;

19 (v) Use of a minor in a sexual performance;

20 (vi) Solicitation of a minor to practice prostitution; ~~or~~

21 ~~(vii) Any conviction resulting from an underlying sexual offense against a victim~~
22 ~~who is a minor.~~ Use of a minor to engage in any sexually explicit conduct to produce
23 any visual medium depicting such conduct;

24 (viii) Creating, publishing, selling, or distributing any material depicting a minor
25 engaged in sexually explicit conduct;

26 (ix) Transmitting, making, selling, buying, or disseminating by means of a computer
27 any descriptive or identifying information regarding a child for the purpose of
28 offering or soliciting sexual conduct of or with a child or the visual depicting of such
29 conduct; or

30 (x) Any conduct which, by its nature, is a sexual offense against a minor.

31 (B) For purposes of this paragraph, conduct which is criminal only because of the age
32 of the victim shall not be considered a criminal offense if the perpetrator is 18 years of
33 age or younger.

34 (5) 'Mental abnormality' means a congenital or acquired condition of a person that affects
35 the emotional or volitional capacity of the person in a manner that predisposes that person
36 to the commission of criminal sexual acts to a degree that makes the person a menace to
37 the health and safety of other persons.

1 (6) 'Predatory' means an act directed at a stranger or a person with whom a relationship
2 has been established or promoted for the primary purpose of victimization.

3 (7) 'Sexually violent offense' means a conviction for violation of Code Section 16-6-1,
4 relating to rape; Code Section 16-6-2, relating to aggravated sodomy; Code Section
5 16-6-4, relating to aggravated child molestation; or Code Section 16-6-22.2, relating to
6 aggravated sexual battery; or an offense that has as its element engaging in physical
7 contact with another person with intent to commit such an offense; or a conviction in a
8 federal court, military court, tribal court, or court of another state or territory for any
9 offense which under the laws of this state would be classified as a violation of a Code
10 section listed in this paragraph.

11 (8) 'Sexually violent predator' means a person who has been convicted on or after July
12 1, 1996, of a sexually violent offense and who suffers from a mental abnormality or
13 personality disorder or attitude that places the person at risk of perpetrating any future
14 predatory sexually violent offenses.

15 (b)(1)(A)(i) On and after July 1, 1996, a person who is convicted of a criminal
16 offense against a victim who is a minor or who is convicted of a sexually violent
17 offense shall register within ten days after his or her release from prison or placement
18 on parole, supervised release, or probation his or her name and current address; place
19 of employment, if any; the crime of which convicted; school address, if any; and the
20 date released from prison or placed on parole, supervised release, or probation with
21 the appropriate sheriff's office as specified in subsection (c) of this Code section in
22 the county where such person will reside for the time period specified in subsection
23 (g) of this Code section.

24 (ii) A person who has previously been convicted of a criminal offense against a
25 victim who is a minor or who has previously been convicted of a sexually violent
26 offense and who is released from prison or placed on parole, supervised release, or
27 probation on or after July 1, 1996, shall register within ten days after such release or
28 placement his or her name and current address; place of employment, if any; the
29 crime of which convicted; school address, if any; and the date released from prison
30 or placed on parole, supervised release, or probation with the appropriate sheriff's
31 office as specified in subsection (c) of this Code section in the county where such
32 person will reside for the time period specified in subsection (g) of this Code section.

33 (iii) On and after July 1, 1999, any resident of Georgia who is convicted under the
34 laws of another state or territory, under the laws of the United States, ~~or~~ under the
35 Uniform Code of Military Justice, or in a tribal court of a sexually violent offense or
36 a criminal offense against a victim who is a minor shall register within ten days after
37 his or her release from prison or placement on parole, supervised release, or

1 probation. The information such an offender is required to register shall include his
2 or her name and current address; place of employment, if any; the crime of which
3 convicted; school address, if any; and the date released from prison or placed on
4 parole, supervised release, or probation. Such an offender shall register with the
5 appropriate sheriff's office as specified in subsection (c) of this Code section in the
6 county where such person will reside for the time period specified in subsection (g)
7 of this Code section.

8 (iv) On and after July 1, 2001, a person who is discharged without adjudication of
9 guilt and who is not considered to have a criminal conviction pursuant to Article 3 of
10 Chapter 8 of this title, relating to first offenders, shall be subject to the registration
11 requirements of this Code section if the offense for which such person received first
12 offender treatment was a criminal offense against a victim who is a minor or was a
13 sexually violent offense. A defendant receiving first offender treatment pursuant to
14 Article 3 of Chapter 8 of this title shall register with the appropriate sheriff's office
15 as specified in subsection (c) of this Code section in the county where such person
16 will reside for the time specified in subsection (g) of this Code section, within ten
17 days after he or she is placed on probation or released from confinement as authorized
18 under Code Section 42-8-60, his or her name and current address; place of
19 employment, if any; the crime for which such person received first offender
20 treatment; school address, if any; and the date placed on probation or released from
21 confinement.

22 (B) A person who is a sexually violent predator shall register within ten days after his
23 or her release from prison or placement on parole, supervised release, or probation the
24 information required under subparagraph (A) of this paragraph with the appropriate
25 sheriff's office as specified in subsection (c) of this Code section in the county where
26 such person will reside. The sheriff may prepare a list of such sexual predators
27 providing each person's name, address, and photograph. The sheriff shall update the
28 list periodically and may post such list in a prominent and visible location in the
29 sheriff's office and each city hall or primary administration building of every
30 incorporated municipality within the county. Such list shall also be made available
31 upon request to any public or private elementary, secondary, or postsecondary school
32 or educational institution located in the county.

33 (2)(A) Upon a determination that an offender is guilty of a sexually violent offense, the
34 court may request a report from the Sexual Offender Registration Review Board as to
35 the likelihood that the offender suffers from a mental abnormality or personality
36 disorder that would make the person likely to engage in a predatory sexually violent
37 offense. The report shall be requested as a matter of course for any offender with a

1 history of sexually violent offenses. The court shall provide the Sexual Offender
2 Registration Review Board with any information available to assist the board in
3 rendering an opinion. The board shall have 60 days from receipt of the court's request
4 to respond with its report. After receiving a recommendation from the Sexual Offender
5 Registration Review Board that a convicted sexually violent offender be classified as
6 a sexually violent predator, the sentencing court shall so inform the offender and shall
7 set a date to conduct a hearing affording the offender the opportunity to present
8 testimony or evidence relevant to the recommended classification. After the hearing and
9 within 60 days of receiving the report, the court shall issue a ruling as to whether or not
10 the offender shall be classified as a sexually violent predator. If the court determines
11 the offender to be a sexually violent predator, such fact shall be communicated in
12 writing to the appropriate state official and to the Georgia Bureau of Investigation.

13 (B) The Sexual Offender Registration Review Board shall be composed of three
14 professionals licensed under Title 43 and knowledgeable in the field of the behavior and
15 treatment of sexual offenders; at least one representative from a victims' rights
16 advocacy group or agency and at least one representative from a law enforcement
17 agency who is certified as a peace officer under Title 35. The members of such board
18 shall be appointed by the commissioner of human resources for terms of four years.
19 Members of the board shall take office on the first day of September immediately
20 following the expired term of that office and shall serve for a term of four years and
21 until the appointment of their respective successors. No member shall serve on the
22 board more than two consecutive terms. Vacancies occurring on the board, other than
23 those caused by expiration of a term of office, shall be filled in the same manner as the
24 original appointment to the position vacated for the remainder of the unexpired term
25 and until a successor is appointed. Members shall be entitled to an expense allowance
26 and travel cost reimbursement the same as members of certain other boards and
27 commissions as provided in Code Section 45-7-21.

28 (C) The Sexual Offender Review Board shall be attached to the Department of Human
29 Resources for administrative purposes and provided there is adequate funding provided
30 shall:

- 31 (i) Exercise its quasi-judicial, rule-making, or policy-making functions independently
32 of the department and without approval or control of the department;
- 33 (ii) Prepare its budget, if any, and submit its budgetary requests, if any, through the
34 department; and
- 35 (iii) Hire its own personnel if authorized by the Constitution of this state or by statute
36 or if the General Assembly provides or authorizes the expenditure of funds therefor.

1 (3)(A) If a person who is required to register under this Code section is released from
2 prison or placed on parole, supervised release, or probation, the appropriate state
3 official shall:

4 (i) Inform the person of the duty to register and obtain the information required under
5 subparagraph (A) of paragraph (1) of this subsection for such registration;

6 (ii) Inform the person that, if the person changes residence address, employment
7 address, or school address, the person shall give the new address to the sheriff or
8 sheriffs with whom the person last registered, not later than ten days after the change
9 of address. Following such notification, the sheriff's office shall notify immediately
10 the Georgia Bureau of Investigation through the Criminal Justice Information System
11 (CJIS) of each change of ~~residence~~ address;

12 (iii) Inform the person that the person must register in any state where the person is
13 employed or carries on a vocation or is a student;

14 (iv) Inform the person that, if the person changes residence to another state, the
15 person shall register the new address with the sheriff or sheriffs with whom the person
16 last registered, and that the person shall also register with a designated law
17 enforcement agency in the new state not later than ten days after establishing
18 residence in the new state;

19 (v) Obtain fingerprints and a photograph of the person if such fingerprints and
20 photograph have not already been obtained in connection with the offense that
21 triggered the initial registration; and

22 (vi) Require the person to read and sign a form stating that the duty of the person to
23 register under this Code section has been explained. A copy of this form and any
24 other registration information furnished by the Department of Corrections shall be
25 forwarded to the Georgia Bureau of Investigation.

26 (B) In addition to the requirements of subparagraph (A) of this paragraph, for a person
27 required to register under subparagraph (B) of paragraph (1) of this subsection, the
28 appropriate state official shall obtain the name of the person; descriptive physical and
29 behavioral information to assist law enforcement personnel in identifying the person;
30 known current or proposed residence addresses of the person; place of employment, if
31 any; offense history of the person; and documentation of any treatment received for any
32 mental abnormality or personality disorder of the person; provided, however, that the
33 appropriate state official shall not be required to obtain any information already on the
34 criminal justice information system of the Georgia Crime Information Center.

35 (C) The Georgia Crime Information Center shall create criminal justice information
36 system network transaction screens by which appropriate state officials shall enter
37 original data required by this Code section including residence address, school address,

1 and employment address. Screens shall also be created for sheriffs' offices for the entry
2 of record confirmation data; employment; changes of residence, school, or and
3 employment; or other pertinent data and to assist in offender identification.

4 (D) Any person changing residence from another state or territory of the United States
5 to Georgia who is required to register under federal law or the laws of another state, ~~or~~
6 territory, or tribal authority or who has been convicted of an offense in another state,
7 ~~or territory, or tribal authority~~ which would require registration under this Code section
8 if committed in this state shall comply with the registration requirements of this Code
9 section. Such person shall register the new address and employment information with
10 the appropriate sheriff of the county as specified in subsection (c) of this Code section
11 ~~of new residence~~ not later than ten days after the date of establishing residency in this
12 state. Upon the person's registration with the sheriff of the county of new residence,
13 the sheriff or his or her designee shall forward the registration information to the
14 Georgia Bureau of Investigation. The sheriff or his or her designee shall obtain any
15 needed information concerning the registrant, including fingerprints and a photograph
16 of the person if such fingerprints and photograph have not previously been obtained
17 within the State of Georgia. In addition, the sheriff or his or her designee shall inform
18 the person of the duty to report any change of address as otherwise required in this
19 Code section. The Georgia Bureau of Investigation shall forward such information in
20 the manner described in subsection (c) of this Code section.

21 (E) The following persons are also required to register:

22 (i) Any nonresident who enters this state for the purpose of employment for a period
23 exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days
24 during any calendar year and who is required to register under federal law, military
25 law, tribal law, or the laws of another state or territory, which, based on an act, would
26 require registration under this Code section; or

27 (ii) Any nonresident who enters this state for the purpose of attending school as a
28 full-time or part-time student and who is required to register under federal law,
29 military law, tribal law, or the laws of another state or territory, which, based on an
30 act, would require registration under this Code section.

31 Any person required to register by this subparagraph shall not later than ten days after
32 the person enters the state register with the sheriff of the county of his or her temporary
33 address, with the sheriff of the county of his or her employment, and with the sheriff
34 of the county in which the person is attending school. The information registered shall
35 include the person's temporary address, permanent address in the person's state of
36 residence, employment address, or school address. Upon the person's registration, the
37 sheriff or the sheriff's designee shall forward the registration information to the Georgia

1 Bureau of Investigation. The sheriff or the sheriff's designee shall obtain the
2 fingerprints and photograph of the person, if the person's fingerprints and photograph
3 have not previously been obtained in Georgia. The sheriff or the sheriff's designee
4 shall inform the person of his or her duty to report any change in temporary residence,
5 permanent residence, employment address, or school address.

6 (c) The appropriate state official shall, within three days after receipt of information
7 described in paragraph (3) of subsection (b) of this Code section, forward such information
8 to the Georgia Bureau of Investigation. Once the data is entered into the criminal justice
9 information system by the appropriate state official or sheriff, the Georgia Crime
10 Information Center, where appropriate, shall immediately notify the sheriff of the person's
11 county of residence, either permanent or temporary, the sheriff of the county of
12 employment, and the sheriff of the county where the person attends school. The Georgia
13 Bureau of Investigation shall also immediately transmit the conviction data and fingerprints
14 to the Federal Bureau of Investigation. It shall be the duty of the sheriff of each county
15 within this state to maintain a register of the names and addresses of all registered offenders
16 within the sheriff's jurisdiction whose names have been provided by the Georgia Bureau
17 of Investigation to the sheriff under this Code section. The Georgia Bureau of
18 Investigation shall establish operating policies and procedures concerning record
19 ownership, quality, verification, modification, and cancellation and shall perform mail out
20 and verification duties on a quarterly basis. The Georgia Bureau of Investigation shall send
21 each month criminal justice information system network messages to sheriffs listing
22 offenders due for verification. The bureau shall also create a photo image file from original
23 entries and provide such entries to sheriffs to assist in offender identification and
24 verification.

25 (d)(1) For a person required to register under subparagraph (b)(1)(A) of this Code
26 section, on each anniversary of the person's initial registration date during the period in
27 which the person is required to register under this Code section, the following applies:

28 (A) The Georgia Bureau of Investigation shall mail a nonforwardable verification form
29 to the last reported address of the person;

30 (B) The person shall be required as a condition of parole or probation to respond
31 directly to the sheriff within ten days after receipt of the form;

32 (C) The verification form stating that the person still resides at the address last reported
33 to the Georgia Bureau of Investigation shall be signed by the person and retained by the
34 sheriff; and

35 (D) If the person fails to respond directly to the sheriff within ten days after receipt of
36 the form, the person shall be in violation of this Code section, ~~unless the person proves~~
37 ~~that he or she has not changed his or her residence address.~~

(2) The provisions of paragraph (1) of this subsection shall be applied to a person required to register under subparagraph (b)(1)(B) of this Code section, except that such person must verify the registration every 90 days after the date of the initial release on probation by the court or the initial release by the Department of Corrections or commencement of parole.

(e) A change of address by a person required to register under this Code section reported to the Georgia Bureau of Investigation shall be immediately reported to the sheriff of the county where the person resides as set forth in subparagraph (b)(3)(E) of this Code section. The Georgia Bureau of Investigation shall, if the person changes residence to another state, notify the law enforcement agency with which the person must register in the new state.

(f) A person who has been convicted of an offense which requires registration under this Code section shall register the new address with a designated law enforcement agency in another state to which the person moves not later than ten days after such person establishes residence in the new state if the new state has a registration requirement.

(g) A person required to register under subparagraph (b)(1)(A) of this Code section shall continue to comply with this Code section, except during ensuing periods of incarceration, until:

(1) Ten years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

(2) For the life of that person if that person:

(A) Has one or more prior convictions for an offense described in subparagraph (a)(4)(A) and paragraph (7) of subsection (a) of this Code section;

(B) Has been convicted of an aggravated offense described in paragraph (7) of subsection (a) of this Code section; or

(C) Has been determined to be a sexually violent predator pursuant to subparagraph (b)(2)(A) of this Code section.

(h) Any person who is required to register under this Code section and who fails to comply with the requirements of this Code section or who provides false information shall be guilty of a misdemeanor; provided, however, that upon the conviction of the second or subsequent offense under this subsection, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than three years or by a fine in an amount of up to \$100,000.00, or both.

(i) The information collected under the state registration program shall be treated as private data except that:

(1) Such information may be disclosed to law enforcement agencies for law enforcement purposes;

(2) Such information may be disclosed to government agencies conducting confidential background checks;

(3) The Georgia Bureau of Investigation or any sheriff maintaining records required under this Code section shall release relevant information collected under this Code section that is necessary to protect the public concerning those persons required to register under this Code section, except that the identity of a victim of an offense that requires registration under this Code section shall not be released. In addition to any other notice that may be necessary to protect the public, nothing in this Code section shall prevent any sheriff from posting this information in any public building in addition to those locations enumerated in subparagraph (b)(1)(B) of this Code section; and

(4) It shall be the responsibility of the sheriff maintaining records required under this Code section to enforce the criminal provisions of this Code section. The sheriff may request the assistance of the Georgia Bureau of Investigation upon his or her discretion.

(j) Law enforcement agencies, employees of law enforcement agencies, members of the Sexual Offender Registration Review Board, and state officials shall be immune from liability for good faith conduct under this Code section.

(k) The provisions of this Code section shall be in addition to and not in lieu of the provisions of Code Section 42-9-44.1, relating to conditions for parole of sexual offenders.

(l) The Board of Public Safety is authorized to promulgate rules and regulations necessary for the Georgia Bureau of Investigation and the Georgia Crime Information Center to implement and carry out the provisions of this Code section."

SECTION 2.

Said title is further amended by striking in its entirety subsection (a) of Code Section 42-8-62, relating to discharge of defendant without adjudication of guilt with respect to certain first offenders, and inserting in lieu thereof a new subsection (a) to read as follows:

"(a) Upon fulfillment of the terms of probation, upon release by the court prior to the termination of the period thereof, or upon release from confinement, the defendant shall be discharged without court adjudication of guilt. Except for the registration requirements under the state sexual offender registry, the The discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. It shall be the duty of the clerk of court to enter on the criminal docket and all other records of the court pertaining thereto the following:

'Discharge filed completely exonerates the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties, except for registration requirements

Such entry shall be written or stamped in red ink, dated, and signed by the person making such entry or, if the docket or record is maintained using computer print-outs, microfilm, or similar means, such entry shall be underscored, boldface, or made in a similar conspicuous manner and shall be dated and include the name of the person making such entry. The criminal file, docket books, criminal minutes and final record, and all other records of the court relating to the offense of a defendant who has been discharged without court adjudication of guilt pursuant to this subsection shall not be altered as a result of that discharge, except for the entry of discharge thereon required by this subsection, nor shall the contents thereof be expunged or destroyed as a result of that discharge."

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

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