

SENATE SUBSTITUTE TO HB 314

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 16 and Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia
 2 Annotated, relating to crimes and offenses and the Sexual Offender Registration Review
 3 Board, respectively, so as to change provisions relating to sexual offenses or sexually related
 4 offenses; to provide that it shall be unlawful for persons required to register as sexual
 5 offenders to photograph a minor under certain circumstances; to provide for penalties; to
 6 provide for gender neutrality with regard to the offense of incest; to change certain
 7 definitions; to provide for sexual offenders to register with the sheriff of any county where
 8 such offender resides, is employed, or is attending an institution of higher education in lieu
 9 of only registering in the county of residence and having the sheriff for such county be
 10 responsible for forwarding information about such offender to the sheriffs of the counties
 11 where such offender is employed or attends an institution of higher education; to require
 12 sexual offenders to submit palm prints; to change certain residency requirements for certain
 13 sexual offenders; to require the Department of Corrections to forward certain information to
 14 sheriffs; to change reporting requirements when a sexual offender is incarcerated; to change
 15 provisions relating to the time frame a sheriff has to update certain information; to change
 16 certain penalty provisions; to change provisions relating to restrictions on where sexual
 17 offenders and sexually dangerous predators may reside, work, and volunteer; to provide a
 18 mechanism for certain elderly and disabled sexual offenders to petition the superior court to
 19 be released from certain residency requirements; to amend Code Section 24-4-60 of the
 20 Official Code of Georgia Annotated, relating to requirement for DNA analysis of blood of
 21 persons convicted of certain sex offenses or convicted of a felony and incarcerated in a state
 22 correctional facility, so as to provide for DNA analysis of persons convicted of certain
 23 felonies and sexual offenses who are placed on probation; to provide for related matters; to
 24 repeal conflicting laws; and for other purposes.

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

26 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
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1 amended by revising subsection (a) of Code Section 16-6-22, relating to incest, as follows:

2 "(a) A person commits the offense of incest when ~~the~~ such person engages in sexual
3 intercourse or sodomy, as such term is defined in Code Section 16-6-2, with a person to
4 whom he or she knows he or she is related to either by blood or by marriage as follows:

5 (1) Father and ~~daughter or stepdaughter~~ child or stepchild;

6 (2) Mother and ~~son or stepson~~ child or stepchild;

7 (3) Sibling ~~Brother and sister~~ of the whole blood or of the half blood and sibling of the
8 whole blood or of the half blood;

9 (4) Grandparent and grandchild;

10 (5) Aunt and niece or nephew; or

11 (6) Uncle and niece or nephew."

12 SECTION 1.1.

13 Said title is further amended by revising Part 2 of Article 3 of Chapter 12, relating to offenses
14 related to minors generally, by adding a new Code section to the end of the part to read as
15 follows:

16 "16-12-100.4.

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

18 (1) 'Minor' means any individual who is under 18 years of age.

19 (2) 'Photograph' means any picture, film or digital photograph, motion picture film,
20 videotape, or similar visual representation or image of a person.

21 (b) It shall be unlawful for any person who is required to register as a sexual offender
22 pursuant to Code Section 42-1-12 to intentionally photograph a minor without consent of
23 the minor's parent or guardian.

24 (c) Any person who violates this Code section shall be guilty of a misdemeanor of a high
25 and aggravated nature."

26 SECTION 2.

27 Code Section 24-4-60 of the Official Code of Georgia Annotated, relating to requirement for
28 DNA analysis of blood of persons convicted of certain sex offenses or convicted of a felony
29 and incarcerated in a state correctional facility, is revised as follows:

30 "24-4-60.

31 (a) As used in subsection (b) of this Code section, the term 'state correctional facility'
32 means a penal institution under the jurisdiction of the Department of Corrections, including
33 inmate work camps and inmate boot camps; provided, however, that such term shall not
34 include a probation detention center, probation diversion center, or probation boot camp
35 under the jurisdiction of the Department of Corrections.

1 (b) Any person convicted of a criminal offense defined in Code Section 16-6-1, relating
2 to the offense of rape; Code Section 16-6-2, relating to the offense of sodomy or
3 aggravated sodomy; Code Section 16-6-3, relating to the offense of statutory rape; Code
4 Section 16-6-4, relating to the offense of child molestation or aggravated child molestation;
5 Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; Code
6 Section 16-6-5.1, relating to the offense of sexual assault against persons in custody, sexual
7 assault against a person detained or a patient in a hospital or other institution, or sexual
8 assault by a practitioner of psychotherapy against a patient; Code Section 16-6-6, relating
9 to the offense of bestiality; Code Section 16-6-7, relating to the offense of necrophilia; or
10 Code Section 16-6-22, relating to the offense of incest, shall have a sample of his or her
11 blood, an oral swab, or a sample obtained from a noninvasive procedure taken for DNA
12 (deoxyribonucleic acid) analysis to determine identification characteristics specific to the
13 person. In addition, on and after July 1, 2000, any person convicted of a felony and
14 incarcerated in a state correctional facility shall at the time of entering the prison system
15 have a sample of his or her blood, an oral swab, or a sample obtained from a noninvasive
16 procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification
17 characteristics specific to the person. The provisions and requirements of this Code section
18 shall also apply to any person who has been convicted of a felony prior to July 1, 2000, and
19 who currently is incarcerated in a state correctional facility in this state for such offense.
20 The provisions and requirements of this Code section shall also apply to any person who
21 has been convicted of a felony in this state on or after July 1, 2000, and who is incarcerated
22 in a private correctional facility in this state for such offense pursuant to a contract with the
23 Department of Corrections upon entering the facility, and for any person convicted of a
24 felony prior to July 1, 2000, and who is incarcerated in a private correctional facility in this
25 state pursuant to contract with the Department of Corrections. The analysis shall be
26 performed by the Division of Forensic Sciences of the Georgia Bureau of Investigation.
27 The division shall be authorized to contract with individuals or organizations for services
28 to perform such analysis. The identification characteristics of the profile resulting from the
29 DNA analysis shall be stored and maintained by the bureau in a DNA data bank and shall
30 be made available only as provided in Code Section 24-4-63.

31 (c)(1) On and after July 1, 2007, any person who is placed on probation shall have a
32 sample of his or her blood, an oral swab, or a sample obtained from a noninvasive
33 procedure taken for DNA (deoxyribonucleic acid) analysis to determine identification
34 characteristics specific to the person if such person is convicted of a felony violation of
35 any of the following:

36 (A) Chapter 5 of Title 16, relating to crimes against persons;

37 (B) Code Section 16-6-1, relating to the offense of rape;

1 (C) Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy;

2 (D) Code Section 16-6-3, relating to the offense of statutory rape;

3 (E) Code Section 16-6-4, relating to the offense of child molestation or aggravated
4 child molestation;

5 (F) Code Section 16-6-5, relating to the offense of enticing a child for indecent
6 purposes;

7 (G) Code Section 16-6-5.1, relating to the offense of sexual assault against persons in
8 custody, sexual assault against a person detained or a patient in a hospital or other
9 institution, or sexual assault by a practitioner of psychotherapy against a patient;

10 (H) Code Section 16-6-6, relating to the offense of bestiality;

11 (I) Code Section 16-6-7, relating to the offense of necrophilia;

12 (J) Code Section 16-6-22, relating to the offense of incest;

13 (K) Code Section 16-7-1, relating to the offense of burglary;

14 (L) Code Section 16-8-40, relating to the offense of robbery;

15 (M) Code Section 16-8-41, relating to the offense of armed robbery;

16 (N) Code Section 16-10-23, relating to the offense of impersonating an officer;

17 (O) Code Section 16-10-24, relating to the offense of obstruction of an officer;

18 (P) Article 4 of Chapter 11 of Title 16, relating to dangerous instrumentalities and
19 practices; and

20 (Q) Chapter 13 of Title 16, relating to controlled substances.

21 (2) The analysis shall be performed by the Division of Forensic Sciences of the Georgia
22 Bureau of Investigation. The division shall be authorized to contract with individuals or
23 organizations for services to perform such analysis. The identification characteristics of
24 the profile resulting from the DNA analysis shall be stored and maintained by the bureau
25 in a DNA data bank and shall be made available only as provided in Code Section
26 24-4-63. The Department of Corrections shall be responsible for collecting such sample."

27 **SECTION 3.**

28 Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to the
29 Sexual Offender Registration Review Board, is amended in Code Section 42-1-12, relating
30 to the State Sexual Offender Registry, by revising paragraphs (1) and (6) of subsection (a)
31 and subparagraphs (a)(16)(A) and (a)(16)(C) as follows:

32 "(1) 'Address' means the street or route address of the sexual offender's residence. For
33 purposes of this Code section, the term does not mean a post office box, and homeless or
34 in a vehicle does not constitute an address."

35 "(6) 'Child care facility' means all public and private pre-kindergarten facilities, day-care
36 centers, child care learning centers, preschool facilities, and long-term care facilities for

1 children. Such term shall not include private, in-home child day care which is not
 2 licensed by this state."

3 "(A) Name; social security number; age; race; sex; date of birth; height; weight; hair
 4 color; eye color; fingerprints; palmprints; and photograph;"

5 "~~(C) If the place of residence is a motor vehicle or trailer, provide the vehicle~~
 6 ~~identification number, the license tag number, and a description, including color~~
 7 ~~scheme, of the motor vehicle or trailer~~ Reserved;"

8 SECTION 4.

9 Said article is further amended in Code Section 42-1-12, relating to the State Sexual Offender
 10 Registry, by revising paragraphs (3), (6), and (8) of subsection (b) as follows:

11 "(3) Inform the sexual offender that, if the sexual offender changes any of the required
 12 registration information, other than residence address, place of employment, or
 13 enrollment at an institution of higher education, the sexual offender shall give the new
 14 information to the sheriff of the each county with whom the sexual offender is registered
 15 within 72 hours of the change of information; if the information is the sexual offender's
 16 new residence address, change in employment location, or change in where the sexual
 17 offender is attending an institution of higher education, the sexual offender shall give the
 18 information to the sheriff of the each county with whom the sexual offender last
 19 registered within 72 hours prior to moving or changing employment or attendance at an
 20 institution of higher education and to the sheriff of the county to which the sexual
 21 offender is moving or changing employment or attendance at an institution of higher
 22 education within 72 hours after the change of information;"

23 "(6) Obtain fingerprints, palm prints, and a current photograph of the sexual offender;"

24 "(8) At least 30 days prior to such release, obtain ~~Obtain~~ and forward any information
 25 obtained from the clerk of court pursuant to Code Section 42-5-50 to the sheriff's office
 26 of the county in which the sexual offender will reside; and"

27 SECTION 5.

28 Said article is further amended in Code Section 42-1-12, relating to the State Sexual Offender
 29 Registry, by revising paragraph (3) of subsection (c) as follows:

30 "(3) Forward ~~the sexual offender's fingerprints and photograph,~~ at least 30 days prior to
 31 the sexual offender's release from prison, placement on parole, supervised release, or
 32 probation, the following information to the sheriff's office of the county where the sexual
 33 offender is going to reside;

34 (A) The sexual offender's fingerprints, palm prints, and photograph;

35 (B) The sexual offender's crime of conviction, including conviction date and the

1 entire life of the sexual offender, ~~including~~ excluding ensuing periods of incarceration."

2 SECTION 7.

3 Said article is further amended in Code Section 42-1-12, relating to the State Sexual Offender
4 Registry, by revising paragraphs (1), (3), (4), and (6) of subsection (i) as follows:

5 "(1) Prepare and maintain a list of all sexual offenders and sexually dangerous predators
6 residing, working, or attending an institution of higher education in each county. Such
7 list shall include the sexual offender's name; age; physical description; address; crime of
8 conviction, including conviction date and the jurisdiction of the conviction; photograph;
9 and the risk assessment classification level provided by the board, and an explanation of
10 how the board classifies sexual offenders and sexually dangerous predators;"

11 "(3) Maintain ~~and post~~ a list of every sexual offender residing, working, or attending an
12 institution of higher education in each county and electronically submit and update such
13 list for posting;

14 (A) In the sheriff's office;

15 (B) In any county administrative building;

16 (C) In the main administrative building for any municipal corporation;

17 (D) In the office of the clerk of the superior court so that such list is available to the
18 public; and

19 (E) On a website maintained by the sheriff of the county for the posting of general
20 information;

21 (4) Update the public notices required by paragraph (3) of this Code section within ~~two~~
22 working five business days;"

23 "(6) Update the list of sexual offenders residing, working, or attending an institution of
24 higher education in the county upon receipt of new information affecting the residence
25 address, employment, or attendance at an institution of higher education of a sexual
26 offender or upon the registration of a sexual offender moving into the county, gaining
27 employment in the county, becoming enrolled in an institution of higher education in the
28 county, or by virtue of release from prison, relocation from another county, conviction
29 in another state, federal court, military tribunal, or tribal court. Such list, and any
30 additions to such list, shall be delivered, within 72 hours of updating the list of sexual
31 offenders residing in the county, to all schools or institutions of higher education located
32 in the county;"

33 SECTION 8.

34 Said article is further amended in Code Section 42-1-12, relating to the State Sexual Offender
35 Registry, by revising paragraph (1) of subsection (j) as follows:

1 dangerous sexual offense, and the individual:

2 (A) Resides in a hospice facility, skilled nursing home, residential care facility for the
3 elderly, or nursing home;

4 (B) Is totally and permanently disabled as such term is defined in Code Section
5 49-4-80;

6 (C) Is otherwise seriously physically incapacitated due to illness or injury; or

7 (D) Is 75 years of age or older and at least ten years have elapsed since the date of
8 release from prison or placement on parole, supervised release, or probation.

9 (b)(1) No individual who is required to register under Code Section 42-1-12 shall be
10 employed by or volunteer at any child care facility, school, or church or by or at any
11 business or entity that is located within 1,000 feet of a child care facility, a school, or a
12 church. Such distance shall be determined by the location in which such individual
13 actually carries out or performs the functions of his or her job.

14 (2) No individual who is a sexually dangerous predator shall be employed by any
15 business or entity that is located within 1,000 feet of an area where minors congregate.
16 Such distance shall be determined by the location in which the sexually dangerous
17 predator actually carries out or performs the functions of his or her job.

18 (c) Notwithstanding any ordinance or resolution adopted pursuant to Code Section 16-6-24
19 or subsection (d) of Code Section 16-11-36, it shall be unlawful for any individual required
20 to register pursuant to Code Section 42-1-12 to loiter, as prohibited by Code Section
21 16-11-36, at any child care facility, school, or area where minors congregate.

22 (d) Any sexual offender who knowingly violates the provisions of this Code section shall
23 be guilty of a felony and shall be punished by imprisonment for not less than ten nor more
24 than 30 years.

25 (e) Nothing in this Code section shall create, either directly or indirectly, any civil cause
26 of action against or result in criminal prosecution of any person, firm, corporation,
27 partnership, trust, or association other than an individual required to be registered under
28 Code Section 42-1-12."

29 **SECTION 11.**

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