

House Bill 1297 (AS PASSED HOUSE AND SENATE)

By: Representatives Mumford of the 95th, Levitas of the 82nd, Benfield of the 85th, Ralston of the 7th, Dukes of the 150th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 24 of Title 15 and Title 17 of the Official Code of Georgia Annotated,
2 relating to sexual assault protocol and criminal procedure, respectively, so as to afford
3 greater protection to victims of sexual crimes; to change provisions relating to sexual assault
4 protocol; to provide that failure to follow the sexual assault protocol shall not preclude the
5 admissibility of evidence; to provide for preservation of evidence; to allow victims of certain
6 sexual offenses to have the right to have a free forensic medical examination even if the
7 victim refuses to otherwise cooperate with law enforcement; to allow victims of certain
8 sexual offenses to refuse requests for polygraph examinations or other truth-telling devices;
9 to allow the Criminal Justice Coordinating Council to waive subrogation under certain
10 circumstances; to provide for related matters; to provide for an effective date; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Chapter 24 of Title 15 of the Official Code of Georgia Annotated, relating to sexual assault
15 protocol, is amended by revising subsections (d) and (e) of Code Section 15-24-2, relating
16 to the establishment of sexual assault protocol committee and its purpose, as follows:

17 "(d) The protocol committee shall adopt a written sexual assault protocol, a copy of which
18 shall be furnished to each agency in the judicial circuit that handles cases of sexual assault.
19 The protocol shall be a written document outlining in detail the procedures to be used in
20 investigating, collecting evidence, paying for expenses related to evidence collection, and
21 prosecuting cases arising from alleged sexual assault and shall take into consideration the
22 provisions of Article 4 of Chapter 5 of Title 17. The protocol may provide for different
23 procedures to be used within particular municipalities or counties within the judicial circuit.
24 The protocol committee shall adopt a written sexual assault protocol no later than
25 December 31, 2004. The protocol committee may incorporate sexual assault protocols used
26 in the judicial circuit as they existed on or before July 1, 2004.

1 (e) The purpose of the protocol shall be to ensure coordination and cooperation between
 2 all agencies involved in sexual assault cases so as to increase the efficiency of all agencies
 3 handling such cases and to minimize the stress created for the alleged sexual assault victim
 4 by the legal and investigatory process; provided, however, that a failure by an agency to
 5 follow the protocol shall not constitute an affirmative or other defense to prosecution of a
 6 sexual assault, preclude the admissibility of evidence, nor shall a failure by an agency to
 7 follow the protocol give rise to a civil cause of action."

8 **SECTION 2.**

9 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 10 amended by revising subsection (b) of Code Section 17-5-56, relating to maintenance of
 11 physical evidence containing biological material, as follows:

12 "(b) In a case in which the death penalty is imposed, the evidence shall be maintained until
 13 the sentence in the case has been carried out. In a case that involves the prosecution of a
 14 serious violent felony as defined by Code Section 17-10-6.1, a violation of Code Section
 15 16-6-5.1, or sodomy, statutory rape, child molestation, bestiality, incest, or sexual battery
 16 as those terms are defined in Chapter 6 of Title 16, the evidence that contains biological
 17 material, including, but not limited to, stains, fluids, or hair samples that relate to the
 18 identity of the perpetrator of the crime shall be maintained for ten years after judgment in
 19 the criminal case becomes final or ten years after May 27, 2003, whichever is later.
 20 Evidence in all other felony and misdemeanor cases may be purged."

21 **SECTION 3.**

22 Said title is further amended by revising Chapter 5, relating to searches and seizures, by
 23 adding a new article to read as follows:

24 "ARTICLE 4

25 17-5-70.

26 As used in this article, the term:

- 27 (1) 'Forensic medical examination' means an examination by a health care provider of
 28 a person who is a victim of a sexual assault. Such examination shall include a physical
 29 examination, documentation of biological and physical findings, and collection of
 30 physical evidence from the victim.
 31 (2) 'Investigating law enforcement agency' means the law enforcement agency
 32 responsible for the investigation of the alleged sexual assault.

1 (3) 'Sexual assault' means rape, sodomy, aggravated sodomy, statutory rape, child
2 molestation, aggravated child molestation, sexual assault against a person in custody,
3 sexual assault against a person detained in a hospital or other institution, sexual assault
4 by a practitioner of psychotherapy against a patient, incest, bestiality, sexual battery, and
5 aggravated sexual battery as those terms and offenses are set forth and defined in Chapter
6 of Title 16.

7 17-5-71.

8 (a) Except as otherwise provided in subsection (b) of this Code section or Code Section
9 17-5-55 or 17-5-56, on or after the effective date of this Act, the investigating law
10 enforcement agency shall maintain any physical evidence collected as a result of an alleged
11 sexual assault that contains biological material, including, but not limited to, stains, fluids,
12 or hair samples that relate to the identity of the perpetrator of an alleged sexual assault, for
13 ten years after the report of the alleged sexual assault.

14 (b) If the victim does not cooperate with law enforcement in the investigation or
15 prosecution of an alleged sexual assault, the investigating law enforcement agency shall
16 maintain any physical evidence collected as a result of such alleged sexual assault that
17 contains biological material, including, but not limited to, stains, fluids, or hair samples that
18 relate to the identity of the perpetrator of the alleged sexual assault, for not less than 12
19 months from the date any such physical evidence is collected.

20 17-5-72.

21 A victim shall have the right to have a forensic medical examination regardless of whether
22 the victim participates in the criminal justice system or cooperates with law enforcement
23 in pursuing prosecution of the underlying crime. A victim shall not be required to pay,
24 directly or indirectly, for the cost of a forensic medical examination. The cost of a forensic
25 medical examination shall be paid for by the investigating law enforcement agency.

26 17-5-73.

27 No prosecuting attorney, investigating law enforcement agency, or government official
28 shall ask or require any victim of a sexual assault to submit to a polygraph examination or
29 any other truth-telling device as a condition precedent to investigating such alleged crime.
30 The refusal of a victim to submit to a polygraph examination or any other truth-telling
31 device shall not prevent an investigation or prosecution of any sexual assault."

SECTION 4.

Said title is further amended by revising Code Section 17-15-12, relating to the effect of accepting an award, as follows:

"17-15-12.

(a) Acceptance of an award made pursuant to this chapter shall subrogate the state, to the extent of such award, to any right or right of action occurring to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made. The board may waive subrogation when the victim or claimant presents documentation and the board verifies that judgment, settlement, or other sources have not fully reimbursed the victim or claimant for expenses compensable under this chapter.

(b) Acceptance of an award made pursuant to this chapter based on damages from a criminal act shall constitute an agreement on the part of the recipient reasonably to pursue any and all civil remedies arising from any right of action against the person or persons responsible for or committing the act."

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 6.

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