

House Bill 571

By: Representatives Ralston of the 7th, Keen of the 179th, and Golick of the 34th

A BILL TO BE ENTITLED
AN ACT

1 To change and enact provisions of law relating to classification of sexual offenders, sexual
2 offender registration, and restrictions on sexual offenders' residences, workplaces, and
3 activities; to amend Code Section 5-6-35 of the Official Code of Georgia Annotated, relating
4 to appeals requiring an application for appeal, so as to make such Code section applicable
5 to appeals from decisions of superior courts reviewing a decision of the Sexual Offender
6 Registration Review Board; to amend Article 1 of Chapter 10 of Title 17 of the Official Code
7 of Georgia Annotated, relating to procedures for sentencing in criminal cases, so as to
8 provide that, with respect to sexual offenses committed after a certain date in this state,
9 classification shall be by the sentencing court rather than the Sexual Offender Registration
10 Review Board; to amend Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia
11 Annotated, relating to classification and registration of sexual offenders and regulation of the
12 conduct of such offenders, so as to revise provisions relating to registration of sexual
13 offenders; to change certain definitions; to provide for registration and reporting by sexual
14 offenders who do not have a residence address; to revise provisions relative to classification
15 of sex offenders; to revise certain definitions; to change provisions relative to the process of
16 classification by the Sexual Offender Registration Review Board and review of such
17 classifications; to provide for procedure and review; to provide for other related matters; to
18 provide for an effective date; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

21 Code Section 5-6-35 of the Official Code of Georgia Annotated, relating to appeals requiring
22 an application for appeal, is amended by adding a new paragraph to subsection (a) to read
23 as follows:

24 "(5.1) Appeals from decisions of superior courts reviewing decisions of the Sexual
25 Offender Registration Review Board:"

26 **SECTION 2.**

27 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
 28 procedures for sentencing in criminal cases, is amended by adding a new Code section to
 29 read as follows:

30 "17-10-6.4.

31 (a) As used in this Code section, any term which is defined in Article 2 of Chapter 1 of
 32 Title 42 shall have the meaning specified in that article.

33 (b) With respect to a sexual offender convicted in this state of a crime committed on or
 34 after the effective date of this Code section, the sentencing court shall determine the
 35 likelihood that a sexual offender will engage in another crime against a victim who is a
 36 minor or a dangerous sexual offense. A sexual offender shall as a part of the sentencing
 37 process be placed into Level I risk assessment classification, Level II risk assessment
 38 classification, or sexually dangerous predator classification based upon the court's review
 39 of:

40 (1) A risk assessment profile of the offender to be completed by the Department of
 41 Corrections prior to sentencing, which profile has been approved for such use by the
 42 Board of Corrections;

43 (2) Any evidence introduced by the prosecution;

44 (3) Any evidence introduced by the defense; and

45 (4) Sexual history polygraph information, if available.

46 (c) All information considered by the court in its determination of the classification shall
 47 be a matter of public record, unless the court determines that some specific portion of such
 48 information would invade the privacy of a person other than the sexual offender, in which
 49 case the court may enter an order sealing that specific portion of the record.

50 (d) Any appeal of the court's determination of classification shall be combined with any
 51 other appeal arising from the conviction, so that there shall be a single appeal of all issues
 52 in the case."

53 **SECTION 3.**

54 Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to
 55 classification and registration of sexual offenders and regulation of the conduct of such
 56 offenders, is amended in Code Section 42-1-12, relating to the State Sexual Offender
 57 Registry, by revising portions of subsection (a) as follows:

58 Paragraph (1) of subsection (a) is revised as follows:

59 "(1) 'Address' means the street or route address of the sexual offender's residence. For
 60 purposes of this Code section, the term ~~does~~ shall not mean a post office box, ~~and~~
 61 ~~homeless does not constitute an address."~~

62 Subparagraph (a)(9)(C) is revised as follows:

63 "(C) For purposes of ~~subparagraph (a)(9)(B)~~ of this Code section, conduct which is
 64 punished as for a misdemeanor or shall not be considered a criminal offense against a
 65 victim who is a minor, and conduct which is prosecuted adjudicated in juvenile court
 66 shall not be considered a criminal offense against a victim who is a minor."

67 Paragraph (16) of subsection (a) is revised as follows:

68 "(16) 'Required registration information' means:

69 (A) Name; social security number; age; race; sex; date of birth; height; weight; hair
 70 color, eye color, fingerprints; and photograph;

71 (B) ~~Address of any permanent residence and address of any current temporary~~
 72 ~~residence~~, within the state or out of state, and, if applicable in addition to the address,
 73 a rural route address and a post office box;

74 (C) If the place of residence is a motor vehicle or trailer, ~~provide~~ the vehicle
 75 identification number, the license tag number, and a description, including color
 76 scheme, of the motor vehicle or trailer;

77 (D) If the place of residence is a mobile home, ~~provide~~ the mobile home location
 78 permit number; the name and address of the owner of the home; a description, including
 79 the color scheme of the mobile home; and, if applicable, a description of where the
 80 mobile home is located on the property;

81 (E) If the place of residence is a manufactured home, ~~provide~~ the name and address of
 82 the owner of the home; a description, including the color scheme of the manufactured
 83 home; and, if applicable, a description of where the manufactured home is located on
 84 the property;

85 (F) If the place of residence is a vessel, live-aboard vessel, or houseboat, ~~provide~~ the
 86 hull identification number; the manufacturer's serial number; the name of the vessel,
 87 live-aboard vessel, or houseboat; the registration number; and a description, including
 88 color scheme, of the vessel, live-aboard vessel, or houseboat;

89 (F.1) If the place of residence is the status of homelessness, information as provided
 90 under paragraph (2.1) of subsection (f) of this Code section;

91 (G) Date of employment, place of any employment, and address of employer;

92 (H) Place of vocation and address of the place of vocation;

93 (I) Vehicle make, model, color, and license tag number;

94 (J) If enrolled, employed, or carrying on a vocation at an institution of higher education
 95 in this state, the name, address, and county of each institution, including each campus
 96 attended, and enrollment or employment status;

97 (K) E-mail addresses; and usernames; ~~and user passwords~~; and

98 (L) The name of the crime or crimes for which the sexual offender is registering and
 99 the date released from prison or placed on probation, parole, or supervised release."

100 Paragraph (17) of subsection (a) is revised as follows:

101 "(17) 'Risk assessment classification' means the ~~notification level into which a sexual~~
 102 ~~offender is placed based on the board's assessment~~ classification of a sexual offender as
 103 a Level I risk assessment, Level II risk assessment, or sexually dangerous predator by the
 104 board or a court sentencing under Code Section 17-10-6.4."

105 Paragraph (21) of subsection (a) is revised as follows:

106 "(21) 'Sexually dangerous predator' means a sexual offender:

107 (A) Who was designated as a sexually violent predator between July 1, 1996, and June
 108 30, 2006; or

109 (B) Who is determined by the Sexual Offender Registration Review Board or a court
 110 sentencing under Code Section 17-10-6.4 to be at risk of perpetrating any future
 111 dangerous sexual offense."

112 SECTION 4.

113 Said article is further amended by revising paragraph (6) of subsection (e) of Code Section
 114 42-1-12, relating to the State Sexual Offender Registry, as follows:

115 "(6) Is a nonresident ~~sexual offender~~ who changes residence from ~~another state or~~
 116 ~~territory of the United States~~ any other place to Georgia who is required to register as a
 117 sexual offender under federal law, military law, tribal law, or the laws of another state or
 118 territory, ~~regardless of when the conviction occurred~~ or who has been convicted in this
 119 state of a criminal offense against a victim who is a minor or any dangerous sexual
 120 offense;"

121 SECTION 5.

122 Said article is further amended in Code Section 42-1-12, relating to the State Sexual Offender
 123 Registry, by revising subsection (f) as follows:

124 "(f) Any sexual offender required to register under this Code section shall:

125 (1) Provide the required registration information to the appropriate official before being
 126 released from prison or placed on parole, supervised release, or probation;

127 (2) Register in person with the sheriff of the county in which the sexual offender resides
 128 within 72 hours after the sexual offender's release from prison or placement on parole,
 129 supervised release, probation, or entry into this state;

130 (2.1) In the case of a sexual offender whose place of residence is the status of
 131 homelessness, in lieu of the requirements of paragraph (2) of this subsection, register in
 132 person with the sheriff of the county in which the sexual offender sleeps within 72 hours

133 after the sexual offender's release from prison or placement on parole, supervised release,
 134 probation, or entry into this state and:

135 (A) Provide the places where he or she sleeps, eats, and works and other places which
 136 he or she frequents; and

137 (B) Report every 72 hours in person to the sheriff of the county in which he or she
 138 sleeps, during the sheriff's normal business hours, and update any changes in the
 139 information required under subparagraph (A) of this paragraph;

140 (3) Maintain the required registration information with the sheriff of ~~the~~ each county in
 141 which the sexual offender resides or sleeps;

142 (4) Renew the required registration information with the sheriff of the county in which
 143 the sexual offender resides or sleeps by reporting in person to the sheriff within 72 hours
 144 prior to such offender's birthday each year to be photographed and fingerprinted;

145 (5) Update the required registration information with the sheriff of the county in which
 146 the sexual offender resides within 72 hours of any change to the required registration
 147 information, other than residence address; ~~if.~~ If the information is the sexual offender's
 148 new residence address, the sexual offender shall give the information regarding the sexual
 149 offender's new residence address to the sheriff of the county with whom the sexual
 150 offender last registered within 72 hours prior to any change of residence address and to
 151 the sheriff of the county to which the sexual offender is moving within 72 hours after
 152 establishing ~~the~~ such new residence;

153 (6) If convicted of a dangerous sexual offense on or after July 1, 2006, pay to the sheriff
 154 of the county where the sexual offender resides an annual registration fee of \$250.00
 155 upon each anniversary of such registration; and

156 (7) Continue to comply with the registration requirements of this Code section for the
 157 entire life of the sexual offender, including ensuing periods of incarceration."

158 **SECTION 6.**

159 Said article is further amended in Code Section 42-1-12, relating to the State Sexual Offender
 160 Registry, by revising subsection (n) as follows:

161 "(n) Any individual who:

162 (1) Is required to register under this Code section and who fails to comply with the
 163 requirements of this Code section;

164 (2) Provides false information; or

165 (3) Fails to respond directly to the sheriff ~~within~~ of the county where he or she resides
 166 or sleeps within 72 hours ~~of~~ prior to such individual's birthday

167 shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor
 168 more than 30 years; provided, however, that upon the conviction of the second offense

169 under this subsection, the defendant shall be punished by ~~imprisonment for life~~ not less
170 than 20 nor more than 50 years."

171 **SECTION 7.**

172 Said article is further amended by revising Code Section 42-1-14, relating to risk assessment
173 classifications, as follows:

174 "42-1-14.

175 (a)(1) With respect to crimes committed in this state on or after the effective date of this
176 paragraph classification of sexual offenders shall be by the sentencing court as provided
177 in Code Section 17-10-6.4; and no action shall be taken by the board with respect to such
178 sexual offenders.

179 (2) With respect to sexual offenders other than those committing crimes in this state on
180 or after the effective date of paragraph (1) of this subsection the ~~The~~ board shall
181 determine the likelihood that a sexual offender will engage in another crime against a
182 victim who is a minor or a dangerous sexual offense. The board shall make such
183 determination for any sexual offender convicted on or after July 1, 2006, of a criminal act
184 against a minor or a dangerous sexual offense and for any sexual offender incarcerated
185 on July 1, 2006, but convicted prior to July 1, 2006, of a criminal act against a minor. In
186 addition, any sexual offender who changes residence from another state or territory of the
187 United States to this state and who is not already designated under Georgia law as a
188 sexually dangerous predator, sexual predator, or a sexually violent predator shall have his
189 or her required registration information forwarded by the sheriff of his or her county of
190 registration to the board for the purpose of risk assessment classification. Such
191 ~~determination shall not be required to be made by the board until January 1, 2007;~~
192 ~~provided, however, that such persons shall be subject to this Code section.~~

193 (3) A sexual offender shall be placed into Level I risk assessment classification, Level
194 II risk assessment classification, or sexually dangerous predator classification based upon
195 the board's assessment criteria and information obtained and reviewed by the board. The
196 sexual offender may provide the board with information including, but not limited to,
197 psychological evaluations, sexual history polygraph information, treatment history,
198 personal, social, educational, and work history, and may agree to submit to a
199 psychosexual evaluation or sexual history polygraph conducted by the board. If the
200 sexual offender has undergone treatment through the Department of Corrections, such
201 treatment records shall also be submitted to the board for evaluation. The prosecuting
202 attorney shall provide the board with any information available to assist the board in
203 rendering an opinion, including, but not limited to, criminal history and records related
204 to previous criminal history. On and after July 1, 2006, the clerk of court shall send a

205 copy of the sexual offender's conviction to the board and notify the board that a sexual
 206 offender's evaluation will need to be performed. The board shall render its
 207 recommendation for risk assessment classification within:

208 (1) Sixty days of receipt of a request for an evaluation if the sexual offender is being
 209 sentenced pursuant to subsection (c) of Code Section 17-10-6.2;

210 (2) Six months prior to the sexual offender's proposed release from confinement if the
 211 offender is incarcerated; and

212 ~~(3) Forty-five days of receipt of the required registration information if the sexual~~
 213 ~~offender has entered this state from another state and registered as a sexual offender.~~
 214 Sixty days of receipt of the required registration information from the sheriff when the
 215 sexual offender changes residence from another state or territory of the United States to
 216 this state and is not already classified.

217 (4) The board shall send a copy of its notify the sex offender by first class mail of its
 218 determination of risk assessment classification and shall send a copy of such
 219 classification to the Georgia Bureau of Investigation, the Department of Corrections,
 220 sexual offender the sheriff of the county where the sexual offender resides, and the
 221 sentencing court, if applicable.

222 ~~(b)(1) If the sexual offender has been sentenced pursuant to subsection (c) of Code~~
 223 ~~Section 17-10-6.2, after receiving a recommendation from the board that he or she be~~
 224 ~~classified as a sexually dangerous predator, the sexual offender may request that the~~
 225 ~~sentencing court set a date to conduct a hearing affording the sexual offender the~~
 226 ~~opportunity to present testimony or evidence relevant to the recommended classification.~~
 227 ~~After the hearing and within 60 days of receiving the report, the court shall issue a ruling~~
 228 ~~as to whether or not the sexual offender shall be classified as a sexually dangerous~~
 229 ~~predator. If the court determines the sexual offender to be a sexually dangerous predator,~~
 230 ~~such fact shall be communicated in writing to the appropriate official, the Georgia Bureau~~
 231 ~~of Investigation, and the sheriff of the county where the sexual offender resides. If the~~
 232 ~~board determines that a sexual offender should be classified as a sexually dangerous~~
 233 ~~predator, the sexual offender may petition the board to reevaluate his or her classification.~~
 234 To file a petition for reevaluation, the sexual offender shall be required to submit his or
 235 her written petition for reevaluation to the board within 20 days from the date of the letter
 236 notifying the sexual offender of his or her classification. The sexual offender shall have
 237 60 days from the date of the notification letter to submit information as provided in
 238 subsection (a) of this Code section in support of the sexual offender's petition for
 239 reevaluation. If the sexual offender fails to submit the petition or supporting documents
 240 within the time limits provided, the classification shall be final. The board shall notify
 241 the sexual offender by first class mail of its decision on the petition for reevaluation of

242 risk assessment classification and shall send a copy of such notification to the Georgia
243 Bureau of Investigation, the Department of Corrections, the sheriff of the county where
244 the sexual offender resides or sleeps, and the sentencing court, if applicable.

245 ~~(2) If the sexual offender received a sentence of imprisonment and was sentenced for a~~
246 ~~dangerous sexual offense on or after July 1, 2006, or if the sexual offender is incarcerated~~
247 ~~on July 1, 2006, for a crime against a victim who is a minor, after receiving a~~
248 ~~recommendation from the board that he or she be classified as a sexually dangerous~~
249 ~~predator, the sexual offender may request that the sentencing court set a date to conduct~~
250 ~~a hearing affording the sexual offender the opportunity to present testimony or evidence~~
251 ~~relevant to the recommended classification. After the hearing and within 60 days of~~
252 ~~receiving the report, the court shall issue a ruling as to whether or not the sexual offender~~
253 ~~shall be classified as a sexually dangerous predator. If the court determines the sexual~~
254 ~~offender to be a sexually dangerous predator, such fact shall be communicated in writing~~
255 ~~to the appropriate official, the Georgia Bureau of Investigation, and the sheriff of the~~
256 ~~county where the sexual offender resides. A sexual offender who is classified by the~~
257 board as a sexually dangerous predator may file a petition for judicial review of his or her
258 classification within 30 days of the date of the notification letter, or, if the sexual offender
259 has requested reevaluation, within 30 days of the date of the letter denying the petition
260 for reevaluation. The petition for judicial review shall name the board as defendant, and
261 the petition shall be filed in the superior court of the county where the offices of the board
262 are located. Within 30 days after service of the appeal on the board, the board shall
263 submit a summary of its findings to the trial court and mail a copy, by first class mail, to
264 the sexual offender. The findings of the board shall be considered prima-facie evidence
265 of the classification. The superior court may uphold the classification of the board or if
266 the superior court finds, by a preponderance of the evidence, that the sexual offender is
267 not a sexually dangerous predator, then the sexual offender shall be placed into Level II
268 risk assessment classification. The determination made by the superior court shall be
269 forwarded by the clerk of the superior court to the board, the Georgia Bureau of
270 Investigation, and the sheriff of the county where the sexual offender resides or sleeps.

271 ~~(c) Any sexual offender who changes residence from another state or territory of the~~
272 ~~United States to this state and who is not designated as a sexually dangerous predator,~~
273 ~~sexual predator, or a sexually violent predator shall have his or her required registration~~
274 ~~information forwarded by the sheriff of his or her county of registration to the board for the~~
275 ~~purpose of risk assessment classification. After receiving a recommendation from the~~
276 ~~board that he or she be classified as a sexually dangerous predator, the sexual offender~~
277 ~~may, within 30 days after the issuance of such classification, request a hearing before an~~
278 ~~administrative law judge. Such hearing shall be conducted in accordance with Chapter 13~~

279 ~~of Title 50, the 'Georgia Administrative Procedure Act.' The decision of the administrative~~
 280 ~~law judge shall constitute the final decision of the board subject to the right of judicial~~
 281 ~~review in accordance with Chapter 13 of Title 50. If the final determination is that the~~
 282 ~~sexual offender is classified as a sexually dangerous predator, such fact shall be~~
 283 ~~communicated in writing to the appropriate official, the Georgia Bureau of Investigation,~~
 284 ~~and the sheriff of the county where the sexual offender resides.~~

285 (d) Any individual who was classified as a sexually violent predator prior to July 1, 2006,
 286 shall be classified as a sexually dangerous predator on and after July 1, 2006.

287 (e)(d) Any sexually dangerous predator shall be required to wear an electronic monitoring
 288 system that shall have, at a minimum:

289 (1) The capacity to locate and record the location of a sexually dangerous predator by a
 290 link to a global positioning satellite system;

291 (2) The capacity to timely report or record a sexually dangerous predator's presence near
 292 or within a crime scene or in a prohibited area or the sexually dangerous predator's
 293 departure from specific geographic locations; and

294 (3) An alarm that is automatically activated and broadcasts the sexually dangerous
 295 predator's location if the global positioning satellite monitor is removed or tampered with
 296 by anyone other than a law enforcement official designated to maintain and remove or
 297 replace the equipment.

298 Such electronic monitoring system shall be worn by a sexually dangerous predator for the
 299 remainder of his or her natural life. The sexually dangerous predator shall pay the cost of
 300 such system to the Department of Corrections if the sexually dangerous predator is on
 301 probation; to the State Board of Pardons and Paroles if the sexually dangerous predator is
 302 on parole; and to the sheriff after the sexually dangerous predator completes his or her term
 303 of probation and parole or if the sexually dangerous predator has moved to this state from
 304 another state, territory, or country. The electronic monitoring system shall be placed upon
 305 the sexually dangerous predator prior to his or her release from confinement. If the sexual
 306 offender is not in custody, within 72 hours of the decision classifying the sexual offender
 307 as a sexually dangerous predator ~~by the court~~ in accordance with subsection (b) of this
 308 Code section ~~or a final decision pursuant to subsection (c) of this Code section, whichever~~
 309 ~~applies to the sexual offender's situation, or Code Section 17-16.4~~ the sexually dangerous
 310 predator shall report to the sheriff of the county of his or her residence for purposes of
 311 having the electronic monitoring system placed on the sexually dangerous predator.

312 (f)(e) In addition to the requirements of registration for all sexual offenders, a sexually
 313 dangerous predator shall report to the sheriff of the county where such predator resides six
 314 months following his or her birth month and update or verify his or her required
 315 registration information."

316

SECTION 8.

317 Said article is further amended in Code Section 42-1-15, relating to restriction on registered
 318 offenders residing, working, or loitering within certain distance of child care facilities,
 319 churches, schools, or areas where minors congregate, photographing of minors, penalty for
 320 violations, and civil causes of action, by revising subsections (a) and (e) as follows:

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

322 (1) 'Individual' means a person who ~~is required to register pursuant to Code Section~~
 323 ~~42-1-12 at the time the person violates the provisions of this Code section, is registered,~~
 324 or is required to register, as a sexual offender in this state, under federal law, military law,
 325 tribal law, or the laws of another state or territory, regardless of when the conviction
 326 occurred.

327 (2) 'Loiter' means:

328 (A) To stand idly about;

329 (B) To proceed slowly or proceed with many steps; or

330 (C) To delay or dawdle.

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

332 ~~(3)~~(4) 'Photograph' means to take any picture, film or digital photograph, motion picture
 333 film, videotape, or similar visual representation or image of a person.

334 (5) 'Volunteer' means to engage in an activity in which one could be and ordinarily
 335 would be employed with or without compensation, including, but not limited to, being
 336 involved with or assisting with minors as a teacher or teaching assistant or with minors
 337 who are not supervised by someone other than a sexual offender; provided, however,
 338 such term shall not be construed to preclude participating in activities limited to persons
 339 who are 18 years of age or older or being a participant in worship services or engaging
 340 in religious activities that do not include supervising, teaching, directing or otherwise
 341 participating with minors who are not supervised by someone other than a sexual
 342 offender."

343 "(e) Notwithstanding any ordinance or resolution adopted pursuant to Code Section
 344 16-6-24 or ~~subsection (d) of Code Section 16-11-36,~~ it shall be unlawful for any individual
 345 ~~required to register pursuant to Code Section 42-1-12 to loiter, as prohibited by Code~~
 346 ~~Section 16-11-36,~~ at any child care facility, school, or area where minors congregate."

347

SECTION 9.

348 This Act shall become effective on the thirtieth day after the date on which this Act is
 349 approved by the Governor or becomes law without such approval.

350

SECTION 10.

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