

House Bill 1076

By: Representatives Holcomb of the 81st, Hitchens of the 161st, Frazier of the 126th, Efstration of the 104th, Trammell of the 132nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 24 of Title 15 of the Official Code of Georgia Annotated, relating to
2 sexual assault protocol, so as to require certain certifications to be filed; to amend Article 4
3 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to investigating
4 sexual assault, so as to provide for the retention of evidence of sexual assault when the victim
5 chooses not to immediately report the assault; to provide for a sexual assault case tracking
6 system; to amend Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating
7 to general provisions regarding law enforcement officers and agencies, so as to require law
8 enforcement agencies to enter certain information into the Violent Criminal Apprehension
9 Program established and maintained by the Federal Bureau of Investigation; to amend
10 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,
11 assistants, and others, so as to provide for the refusal, suspension, or revocation of the license
12 of a physician who has committed a sexual assault on a patient; to provide for mandatory
13 reporting by health care professionals who have reasonable cause to believe that a physician
14 has committed a sexual assault on a patient; to provide for definitions; to provide for limited
15 liability; to amend Chapter 34A of Title 43 of the Official Code of Georgia Annotated,
16 relating to patient right to know, so as to provide for annual reporting to the General
17 Assembly of the number of physicians investigated or disciplined for the sexual assault of
18 patients; to provide for definitions; to provide a short title; to provide for related matters; to
19 repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 This Act shall be known and may be cited as the "Sexual Assault Reform Act of 2020."

23 **SECTION 2.**

24 Chapter 24 of Title 15 of the Official Code of Georgia Annotated, relating to sexual assault
25 protocol, is amended by revising Code Section 15-24-2, relating to establishment of sexual

26 assault protocol and committee, representatives to committee, and annual meeting and
 27 review, by adding a new subsection to read as follows:

28 "(g) The protocol committee shall submit a certification of annual compliance to the
 29 Criminal Justice Coordinating Council by December 31 of each year. The Criminal Justice
 30 Coordinating Council shall notify the Governor, Lieutenant Governor, Speaker of the
 31 House of Representatives, and Chief Justice of the Georgia Supreme Court of any
 32 noncompliant judicial circuits."

33 **SECTION 3.**

34 Article 4 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
 35 investigating sexual assault, is amended by revising subsection (b) of Code Section 17-5-71,
 36 relating to preservation of evidence, as follows:

37 "(b) If the victim does not cooperate with law enforcement in the investigation or
 38 prosecution of chooses not to immediately report, as is the victim's right, an alleged sexual
 39 assault, the investigating law enforcement agency shall maintain any physical evidence
 40 collected as a result of such alleged sexual assault that contains biological material,
 41 including, but not limited to, stains, fluids, or hair samples that relate to the identity of the
 42 perpetrator of the alleged sexual assault, for not less than 12 months from the date any such
 43 physical evidence is collected."

44 **SECTION 4.**

45 Said article is further amended by adding a new Code section to read as follows:

46 "17-5-74.

47 (a) For the purposes of this Code section, the term 'unreported sexual assault kit' means a
 48 sexual assault kit collected from a victim who has consented to the collection of the sexual
 49 assault kit but who has not reported the alleged crime to law enforcement.

50 (b) The Criminal Justice Coordinating Council shall create and operate a statewide sexual
 51 assault kit tracking system. The council may contract with state or nonstate entities
 52 including, but not limited to, private software and technology providers, for the creation,
 53 operation, and maintenance of the system.

54 (c) The statewide sexual assault kit tracking system shall:

55 (1) Track the location and status of sexual assault kits throughout the criminal justice
 56 process, including the initial collection in examinations performed at medical facilities,
 57 receipt and storage at law enforcement agencies, receipt and analysis at forensic
 58 laboratories, and storage and any destruction after completion of analysis;

59 (2) Designate sexual assault kits as unreported or reported;

60 (3) Allow medical facilities performing sexual assault forensic examinations, law
61 enforcement agencies, prosecutors, the Division of Forensic Sciences of the Georgia
62 Bureau of Investigation, and other entities having custody of sexual assault kits to update
63 and track the status and location of sexual assault kits;

64 (4) Allow victims of sexual assault to anonymously track or receive updates regarding
65 the status of their sexual assault kits; and

66 (5) Use electronic technology or technologies allowing continuous access.

67 (d) The Criminal Justice Coordinating Council may use a phased implementation process
68 in order to launch the system and facilitate entry and use of the system for required
69 participants. The council may phase initial participation according to region, volume, or
70 other appropriate classifications. All entities having custody of sexual assault kits shall
71 fully participate in the system no later than June 1, 2021. The council shall submit a report
72 on the current status and plan for launching the system, including the plan for phased
73 implementation, to the appropriate committees of the legislature and the governor no later
74 than January 1, 2021.

75 (e) The Criminal Justice Coordinating Council shall submit a semiannual report on the
76 statewide sexual assault kit tracking system to the appropriate committees of the legislature
77 and the governor. The council may publish the current report on its web site. The first
78 report shall be due on or before June 30, 2021, and subsequent reports are due on or before
79 June 30 and on or before December 31 of each year. The report shall include the
80 following:

81 (1) The total number of sexual assault kits in the system statewide and by jurisdiction;

82 (2) The total and semiannual number of sexual assault kits where forensic analysis has
83 been completed statewide and by jurisdiction;

84 (3) The number of sexual assault kits added to the system in the reporting period
85 statewide and by jurisdiction;

86 (4) The total and semiannual number of sexual assault kits where forensic analysis has
87 been requested but not completed statewide and by jurisdiction;

88 (5) The average and median length of time for sexual assault kits to be submitted for
89 forensic analysis after being added to the system, including separate sets of data for all
90 sexual assault kits in the system statewide and by jurisdiction and for sexual assault kits
91 added to the system in the reporting period statewide and by jurisdiction;

92 (6) The average and median length of time for forensic analysis to be completed on
93 sexual assault kits after being submitted for analysis, including separate sets of data for
94 all sexual assault kits in the system statewide and by jurisdiction and for sexual assault
95 kits added to the system in the reporting period statewide and by jurisdiction;

- 96 (7) The total and semiannual number of sexual assault kits destroyed or removed from
 97 the system statewide and by jurisdiction;
- 98 (8) The total number of sexual assault kits, statewide and by jurisdiction, where forensic
 99 analysis has not been completed and six months or more have passed since those sexual
 100 assault kits were added to the system; and
- 101 (9) The total number of sexual assault kits, statewide and by jurisdiction, where forensic
 102 analysis has not been completed and one year or more has passed since those sexual
 103 assault kits were added to the system.
- 104 (f) For the purpose of reports under subsection (e) of this section, a sexual assault kit shall
 105 be assigned to the jurisdiction associated with the law enforcement agency anticipated to
 106 receive the sexual assault kit or otherwise having custody of the sexual assault kit.
- 107 (g) Any public agency or entity, including its officials and employees, and any hospital
 108 and its employees providing services to victims of sexual assault may not be held civilly
 109 liable for damages arising from any release of information or the failure to release
 110 information related to the statewide sexual assault kit tracking system, so long as the
 111 release was without gross negligence.
- 112 (h) The Criminal Justice Coordinating Council shall adopt rules as necessary to implement
 113 this Code section."

114 **SECTION 5.**

115 Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general
 116 provisions regarding law enforcement officers and agencies, is amended by adding a new
 117 Code section to read as follows:

118 "35-1-23.

119 (a) As used in this Code section, the term 'data base' means the national data base of the
 120 Violent Criminal Apprehension Program established and maintained by the Federal Bureau
 121 of Investigation or a successor data base.

122 (b) Each law enforcement agency in this state shall request access from the Federal Bureau
 123 of Investigation to enter information into the data base.

124 (c) Each law enforcement agency that investigates an allegation of rape as defined in Code
 125 Section 16-6-1, aggravated sodomy as defined in Code Section 16-6-2, or aggravated
 126 assault with intent to rape as defined in Code Section 16-5-21, in which the alleged
 127 perpetrator of the assault or offense is unrelated to the victim or is known to be a serial
 128 sexual offender shall enter into the data base the following information regarding such
 129 investigation, as available:

130 (1) The name and date of birth of the alleged perpetrator;

131 (2) The specific crime being investigated;

132 (3) A description of the manner in which the crime was committed, including any pattern
 133 of conduct occurring during the course of multiple crimes suspected to have been
 134 committed by the alleged perpetrator; and

135 (4) Any other information required by the Federal Bureau of Investigation for inclusion
 136 in the data base.

137 Such information shall be updated with any new developments in the investigation
 138 every 60 days thereafter.

139 (d) Information entered into the data base under this Code section shall not be subject to
 140 disclosure under Article 4 of Chapter 18 of Title 50.

141 (e) This Code section shall apply to any pending investigation of an allegation of rape,
 142 aggravated sodomy, or aggravated assault with intent to rape, regardless of whether the
 143 investigation was commenced before, on, or after the effective date of this Code section.

144 (f) This Code section shall not apply to offenses when the victim is at least 14 but less than
 145 16 years of age and the offender is 18 years of age or younger and is not more than four
 146 years older than the victim."

147 **SECTION 6.**

148 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,
 149 assistants, and others, is amended by adding a new subsection to Code Section 43-34-8,
 150 relating to the authority of the Georgia Composite Medical Board to refuse license,
 151 certificate, or permit or issue discipline, to read as follows:

152 "(b.2) The board shall refuse to grant a license to an applicant, or suspend or revoke an
 153 existing license of a physician who:

154 (1) The board has found, after conducting an investigation, to have committed a sexual
 155 assault on a patient;

156 (2) Has pleaded guilty to committing a sexual assault on a patient; or

157 (3) Has been found guilty by a court of law of committing a sexual assault on a patient."

158 **SECTION 7.**

159 Said chapter is further amended in Article 2, relating to medical practice, by adding a new
 160 Code section to read as follows:

161 "43-34-47.

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

163 (1) 'Health care professional' means:

164 (A) A physician licensed to practice medicine under this chapter;

165 (B) A registered nurse or practical nurse licensed under Chapter 26 of this title; or

166 (C) A physician assistant licensed under this chapter.

167 (2) 'Sexual assault' shall have the same meaning as in Code Section 15-24-1.

168 (b) A health care professional shall report the name of a physician to the board if the health
 169 care professional has reasonable cause to believe that such physician has committed sexual
 170 assault on a patient. A health care professional shall not be required to duplicate a report
 171 if he or she has reasonable cause to believe that such report has been made to the board.
 172 A health care professional shall not be required to report a physician to the board under this
 173 Code section as a result of professional knowledge obtained in the course of the health care
 174 professional-patient relationship when the physician is the patient.

175 (c) No health care professional required to report a physician to the board under this Code
 176 section who in good faith either reports or fails to report shall be subject to civil or criminal
 177 liability or discipline for unprofessional conduct for such action or inaction."

178 **SECTION 8.**

179 Chapter 34A of Title 43 of the Official Code of Georgia Annotated, relating to patient right
 180 to know, is amended by revising Code Section 43-34A-9, relating to annual report, as
 181 follows:

182 "43-34A-9.

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

184 (1) 'Sexual abuse, misconduct, or exploitation' shall have the same meaning as in
 185 paragraph (15) of subsection (a) of Code Section 43-34-8.

186 (2) 'Sexual assault' shall have the same meaning as in Code Section 15-24-1.

187 ~~(a)~~(b) On January 1 of each year, the board shall compile a report for the Governor and
 188 General Assembly containing a statistical and comparative data analysis using information
 189 obtained from the physician profiles in addition to other information collected by the board.
 190 The board shall not be required to distribute copies of the report to the Governor or
 191 members of the General Assembly but shall provide notification of the availability of the
 192 report in the manner which it deems to be the most effective and efficient.

193 ~~(b)~~(c) The report shall include, but shall not be limited to, the following information:

194 (1) The number of physicians for which it has created physician profiles;

195 (2) The specialty board certification of such physicians;

196 (3) The geographic regions of the primary practices;

197 (4) The number of physicians participating in the Medicaid program; ~~and~~

198 (5) The number of physicians carrying any medical malpractice insurance and the
 199 specialty and current hospital privileges of the physicians not carrying such insurance and
 200 whether such physicians are actively seeing patients; and

201 (6) The number of physicians for which the board has conducted investigations for
 202 committing an act of sexual assault, sexual abuse, misconduct, or exploitation of a

203 patient, and the outcome of the investigation which shall include whether it refused,
204 revoked, or suspended a license, or issued a private or public disciplinary order."

205 **SECTION 9.**

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