

House Bill 720 (COMMITTEE SUBSTITUTE)

By: Representatives Sainz of the 180th, Efstoration of the 104th, Fleming of the 121st, Burchett of the 176th, Momtahan of the 17th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
 2 relating to procedure for sentencing and imposition of punishment, so as to clarify that a term
 3 of probation shall follow the mandatory term of imprisonment for persons convicted of a
 4 sexual offense; to provide that for certain felonies that such probation shall be for life; to
 5 provide that probation for sexual offenses shall require such persons to wear a device capable
 6 of tracking the location of the probationer by electronic means including global positioning
 7 satellite systems; to revise procedures; to amend Title 42 of the Official Code of Georgia
 8 Annotated, relating to penal institutions, so as to revise the name of the Sexual Offender
 9 Registration Review Board; to remove the registration fee; to provide for registration of
 10 sexual offenders in certain nursing or hospice facilities; to transfer investigators from the
 11 Georgia Bureau of Investigation to the Sexual Offender Risk Review Board; to revise terms
 12 and conditions of probation and supervision to account for requirement of tracking persons
 13 on probation for sexual offenses; to require certain persons convicted of a sexual offense to
 14 post a residential notice on October 31 of each year; to provide for a criminal penalty; to
 15 provide for termination of certain probated sentences; to make conforming changes; to
 16 amend Code Section 16-7-29, Article 2 of Chapter 6 of Title 5, and Article 1 of Chapter 3
 17 of Title 35 of the Official Code of Georgia Annotated, relating to interference with electronic
 18 monitoring devices, "electronic monitoring device" defined, and penalty, appellate practice,
 19 and general provisions regarding the Georgia Bureau of Investigation, respectively, so as to
 20 revise the duties of the Georgia Bureau of Investigation; to provide for a response to *Park*
 21 *v. State*, 2019 Ga. LEXIS 138 (March 4, 2019); to amend Chapter 6 of Title 16 of the Official
 22 Code of Georgia Annotated, relating to sexual offenses, so as to provide a response to *State*
 23 *v. Williams*, 2020 Ga. LEXIS 85 (February 10, 2020); to provide that, when a victim is under
 24 the age of 16, consent of the victim shall not be a defense to a prosecution for sodomy,
 25 aggravated sodomy, child molestation, aggravated child molestation, sexual battery, and
 26 aggravated sexual battery; to make conforming changes; to amend Chapter 24 of Title 15 of
 27 the Official Code of Georgia Annotated, relating to sexual assault protocol, so as to require
 28 certain certifications to be filed; to amend Article 4 of Chapter 5 of Title 17 of the Official

29 Code of Georgia Annotated, relating to investigating sexual assault, so as to provide for the
 30 retention of evidence of sexual assault when the victim chooses not to immediately report the
 31 assault; to provide for a sexual assault case tracking system; to amend Chapter 1 of Title 35
 32 of the Official Code of Georgia Annotated, relating to general provisions regarding law
 33 enforcement officers and agencies, so as to require law enforcement agencies to enter certain
 34 information into the Violent Criminal Apprehension Program established and maintained by
 35 the Federal Bureau of Investigation; to amend Chapter 34 of Title 43 of the Official Code of
 36 Georgia Annotated, relating to physicians, assistants, and others, so as to provide for the
 37 refusal, suspension, or revocation of the license of a physician who has committed a sexual
 38 assault on a patient; to provide for mandatory reporting by health care professionals who
 39 have reasonable cause to believe that a physician has committed a sexual assault on a patient;
 40 to provide for definitions; to provide for limited liability; to amend Chapter 34A of Title 43
 41 of the Official Code of Georgia Annotated, relating to patient right to know, so as to provide
 42 for annual reporting to the General Assembly of the number of physicians investigated or
 43 disciplined for the sexual assault of patients; to provide for definitions; to provide a short
 44 title; to provide for related matters; to provide for applicability; to repeal conflicting laws;
 45 and for other purposes.

46 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

47 **PART I**
 48 **SECTION 1-1.**

49 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
 50 procedure for sentencing and imposition of punishment, is amended in Code
 51 Section 17-10-6.2, relating to punishment for sexual offenders, by revising subsections (b)
 52 and (d) as follows:

53 "(b)(1) Except as provided in subsection (c) of this Code section, and notwithstanding
 54 any other provisions of law to the contrary, any person convicted of a sexual offense shall
 55 be sentenced to a split sentence which shall include the minimum term of imprisonment
 56 specified in the Code section applicable to such sexual offense. No portion of the
 57 mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred,
 58 or withheld by the court. Any such sentence shall ~~include~~, in addition to the mandatory
 59 term of imprisonment, ~~an additional probated sentence of~~ be followed by probation for
 60 at least one year; provided, however, that:

61 (A) When ~~when~~ a court imposes consecutive sentences for sexual offenses, the
 62 requirement that the court impose a probated sentence ~~of at least one year~~ shall only
 63 apply to the final consecutive sentence imposed;

64 (B)(i) For convictions that are felonies and that are for a second or subsequent
 65 conviction for a sexual offense arising out of events that are different from events of
 66 a previous conviction, such probation shall be for life; and

67 (ii) As used in this subparagraph, the term 'sexual offense' means the following
 68 offenses that are felonies:

69 (I) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

70 (II) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
 71 is less than 14 years of age, except by a parent;

72 (III) Trafficking an individual for sexual servitude in violation of Code
 73 Section 16-5-46;

74 (IV) Rape in violation of Code Section 16-6-1;

75 (V) Aggravated sodomy in violation of Code Section 16-6-2;

76 (VI) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
 77 of the offense is 21 years of age or older;

78 (VII) Child molestation in violation of Code Section 16-6-4;

79 (VIII) Aggravated child molestation in violation of Code Section 16-6-4, unless the
 80 person was convicted of a misdemeanor offense;

81 (IX) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

82 (X) Improper sexual contact by employee or agent in the first degree in violation
 83 of Code Section 16-6-5.1, unless the punishment imposed was not subject to Code
 84 Section 17-10-6.2;

85 (XI) Incest in violation of Code Section 16-6-22;

86 (XII) A second or subsequent conviction for sexual battery in violation of Code
 87 Section 16-6-22.1;

88 (XIII) Aggravated sexual battery in violation of Code Section 16-6-22.2;

89 (XIV) Sexual exploitation of children in violation of Code Section 16-12-100; or

90 (XV) Computer pornography and child exploitation in violation of Code
 91 Section 16-12-100.2.

92 (C) All such probation shall be subject to the requirements of paragraph (14) of
 93 subsection (a) of Code Section 42-8-35; and

94 (D) Any law enforcement agency of competent jurisdiction may, on October 30 and 31
 95 of each year, post a sign upon the front of the residence of any person on such
 96 probation, stating the following: 'No candy or treats at this residence.' Such signs shall
 97 further be in the form as provided for by the department.

98 (2) No person convicted of a sexual offense shall be sentenced as a first offender
 99 pursuant to Article 3 of Chapter 8 of Title 42 or any other provision of Georgia law
 100 relating to the sentencing of first offenders."

101 "(d) If the court imposes a probated sentence, the defendant shall submit to review by the
 102 Sexual Offender ~~Registration~~ Risk Review Board for purposes of risk assessment
 103 classification within ~~ten~~ 60 days of being sentenced and shall otherwise comply with
 104 Article 2 of Chapter 1 of Title 42."

105 **SECTION 1-2.**

106 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 107 in Code Section 42-1-12, relating to state sexual offender registry, by revising paragraph (5)
 108 of subsection (a), paragraph (9) of subsection (b), and paragraphs (12) through (14) of
 109 subsection (i) as follows:

110 "(5) 'Board' means the Sexual Offender ~~Registration~~ Risk Review Board."

111 "(9) If required by Code Section ~~42-1-14~~ 17-10-6.2, place any required electronic
 112 monitoring system on the ~~sexually dangerous predator~~ sexual offender and explain its
 113 operation and cost."

114 "(12) If required by Code Section ~~42-1-14~~ 17-10-6.2, place any electronic monitoring
 115 system on the ~~sexually dangerous predator~~ sexual offender and explain its operation and
 116 cost; and

117 (13) Provide current information on names and addresses of all registered sexual
 118 offenders to campus police with jurisdiction for the campus of an institution of higher
 119 education if the campus is within the sheriff's jurisdiction; ~~and~~

120 ~~(14) Collect the annual \$250.00 registration fee from the sexual offender and transmit~~
 121 ~~such fees to the state for deposit into the general fund."~~

122 **SECTION 1-3.**

123 Said title is further amended by revising Code Section 42-1-13, relating to Sexual Offender
 124 Registration Review Board, composition, appointment, administration and duties, and
 125 immunity from liability, as follows:

126 "42-1-13.

127 (a) The Sexual Offender ~~Registration~~ Risk Review Board shall be composed of three
 128 professionals licensed under Title 43 and knowledgeable in the field of the behavior and
 129 treatment of sexual offenders; at least one representative from a victims' rights advocacy
 130 group or agency; and at least two representatives from law enforcement, each of whom is
 131 either employed by a law enforcement agency as a certified peace officer under Title 35
 132 or retired from such employment. The members of the board shall be appointed by the

133 commissioner of behavioral health and developmental disabilities for terms of four years.
 134 On and after July 1, 2006, successors to the members of the board shall be appointed by
 135 the Governor. Members of the board shall take office on the first day of September
 136 immediately following the expired term of that office and shall serve for a term of four
 137 years and until the appointment of their respective successors. No member shall serve on
 138 the board more than two consecutive terms. Vacancies occurring on the board, other than
 139 those caused by expiration of a term of office, shall be filled in the same manner as the
 140 original appointment to the position vacated for the remainder of the unexpired term and
 141 until a successor is appointed. Members shall be entitled to an expense allowance and
 142 travel cost reimbursement the same as members of certain other boards and commissions
 143 as provided in Code Section 45-7-21.

144 (b) The board shall be attached to the Department of Behavioral Health and
 145 Developmental Disabilities for administrative purposes and, provided there is adequate
 146 funding, shall:

147 (1) Exercise its quasi-judicial, rule-making, or policy-making functions independently
 148 of the department and without approval or control of the department;

149 (2) Prepare its budget, if any, and submit its budgetary requests, if any, through the
 150 department; and

151 (3) Hire its own personnel, including but not limited to administrative personnel, ~~and~~
 152 clinical evaluators, and investigators.

153 (c) Investigative positions which, as of June 30, 2020, were under the Georgia Bureau of
 154 Investigation, shall be transferred to the board on July 1, 2020. Any investigator who, as
 155 of June 30, 2012, was employed by the board shall be transferred to the Georgia Bureau
 156 of Investigation on July 1, 2012, and shall no longer be under the administration or
 157 supervision of the board, except as required to provide the board with information as set
 158 forth in paragraph (15) of subsection (a) of Code Section 35-3-4 Georgia Bureau of
 159 Investigation; provided, however, that one position shall remain with the Georgia Bureau
 160 of Investigation to facilitate the provision of information to the board from the Georgia
 161 Crime Information Center and National Crime Information Center. The director of the
 162 Georgia Bureau of Investigation and the executive director of the board shall arrange
 163 administratively for the transfer of any equipment relating to the transfer of such personnel.
 164 (d) Members of the board shall be immune from liability for good faith conduct under this
 165 article."

SECTION 1-4.

166
167 Said title is further amended by repealing Code Section 42-1-14, relating to risk assessment
168 classification, classification as "sexually dangerous predator", and electronic monitoring, in
169 its entirety and enacting a new Code Section 42-1-14 to read as follows:

170 "42-1-14.

171 (a)(1) The board shall determine the likelihood that a sexual offender will engage in
172 another crime against a victim who is a minor or a dangerous sexual offense. Any sexual
173 offender who changes residence from another state or territory of the United States or any
174 other place to this state and who is not already designated under Georgia law as a
175 sexually dangerous predator, sexual predator, or sexually violent predator shall have his
176 or her required registration information forwarded by the sheriff of his or her county of
177 registration to the board for the purpose of risk assessment classification. The board shall
178 also make such determination upon the request of a superior court judge for purposes of
179 considering a petition to be released from registration restrictions or residency or
180 employment restrictions as provided for in Code Section 42-1-19.

181 (2) A sexual offender shall be placed into Level I risk assessment classification, Level II
182 risk assessment classification, or sexually dangerous predator classification based upon
183 the board's assessment criteria and information obtained and reviewed by the board. The
184 sexual offender may provide the board with information, including, but not limited to,
185 psychological evaluations, sexual history polygraph information, treatment history, and
186 personal, social, educational, and work history. If the sexual offender has undergone
187 treatment or supervision through the Department of Corrections or the Department of
188 Community Supervision, such treatment records shall also be submitted to the board for
189 evaluation. The prosecuting attorney shall provide the board with any information
190 available to assist the board in rendering an opinion, including, but not limited to,
191 criminal history and records related to previous criminal history. The board shall be
192 authorized to obtain available information from supervision records prior to July 1, 2015,
193 all public records obtained and electronically retained by the State Board of Pardons and
194 Paroles during its investigation of such sexual offender, but if such records are classified
195 as confidential state secrets, they shall remain confidential state secrets in accordance
196 with Code Section 42-9-53 and shall not be made available to any other person or entity
197 or be subject to subpoena unless declassified by the State Board of Pardons and Paroles.
198 The clerk of court shall send a copy of the sexual offender's conviction to the board and
199 notify the board that a sexual offender's evaluation will need to be performed. The board
200 shall render its recommendation for risk assessment classification within:

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

203 (B) Six months prior to the sexual offender's proposed release from confinement if the
204 offender is incarcerated;

205 (C) Sixty days of receipt of the required registration information from the sheriff when
206 the sexual offender changes residence from another state or territory of the United
207 States or any other place to this state and is not already classified;

208 (D) Sixty days if the sexual offender is sentenced to a probated or suspended sentence;
209 and

210 (E) Ninety days if such classification is requested by the court pursuant to a petition
211 filed under Code Section 42-1-19.

212 (3) The board shall notify the sexual offender by first-class mail of its determination of
213 risk assessment classification and shall send a copy of such classification to the Georgia
214 Bureau of Investigation, the Department of Corrections, the State Board of Pardons and
215 Paroles, the Department of Community Supervision, the sheriff of the county where the
216 sexual offender is registered, and the sentencing court, if applicable.

217 (b) If the board determines that a sexual offender should be classified as a Level II risk
218 assessment classification or as a sexually dangerous predator, the sexual offender may
219 petition the board to reevaluate his or her classification. To file a petition for reevaluation,
220 the sexual offender shall be required to submit his or her written petition for reevaluation
221 to the board within 30 days from the date of the letter notifying the sexual offender of his
222 or her classification. The sexual offender shall have 120 days from the date of the
223 notification letter to submit information as provided in subsection (a) of this Code section
224 in support of the sexual offender's petition for reevaluation. If the sexual offender fails to
225 submit the petition or supporting documents within the time limits provided, the
226 classification shall be final. The board shall notify the sexual offender by first-class mail
227 of its decision on the petition for reevaluation of risk assessment classification and shall
228 send a copy of such notification to the Georgia Bureau of Investigation, the Department of
229 Corrections, the State Board of Pardons and Paroles, the Department of Community
230 Supervision, the sheriff of the county where the sexual offender is registered, and the
231 sentencing court, if applicable. The sexual offender may request reevaluation after ten
232 years following his or her initial classification and then no more than once every five years
233 thereafter.

234 (c) A sexual offender who is classified by the board as a Level II risk assessment
235 classification or as a sexually dangerous predator may file a petition for judicial review of
236 his or her classification within 30 days of the date of the notification letter or, if the sexual
237 offender has requested reevaluation pursuant to subsection (b) of this Code section,
238 within 30 days of the date of the letter denying the petition for reevaluation. The petition
239 for judicial review shall name the board as defendant, and the petition shall be filed in the

240 superior court of the county where the offices of the board are located. Within 30 days
 241 after service of the appeal on the board, the board shall submit a summary of its findings
 242 to the court and mail a copy, by first-class mail, to the sexual offender. The findings of the
 243 board shall be considered prima-facie evidence of the classification. The court shall also
 244 consider any relevant evidence submitted, and such evidence and documentation shall be
 245 mailed to the parties as well as submitted to the court. The court shall hold a hearing to
 246 determine the issue of classification. The court may uphold the classification of the board,
 247 or, if the court finds by a preponderance of the evidence that the sexual offender is not
 248 placed in the appropriate classification level, the court shall place the sexual offender in the
 249 appropriate risk assessment classification. The court's determination shall be forwarded
 250 by the clerk of the court to the board, the sexual offender, the Georgia Bureau of
 251 Investigation, and the sheriff of the county where the sexual offender is registered.
 252 (d) Any individual who was classified as a sexually violent predator prior to July 1, 2006,
 253 shall be classified as a sexually dangerous predator on and after July 1, 2006.
 254 (e) In addition to the requirements of registration for all sexual offenders, a sexually
 255 dangerous predator shall report to the sheriff of the county where such predator resides six
 256 months following his or her birth month and update or verify his or her required
 257 registration information."

258

SECTION 1-5.

259 Said title is further amended in Code Section 42-8-35, relating to terms and conditions of
 260 probation and supervision, by revising subsection (a) as follows:

261 "(a) Except as required by subsection (b) of Code Section 17-10-6.2, the ~~The~~ court shall
 262 determine the terms and conditions of probation and may provide that the probationer shall:

- 263 (1) Avoid injurious and vicious habits;
- 264 (2) Avoid persons or places of disreputable or harmful character;
- 265 (3) Report to the officer as directed;
- 266 (4) Permit the officer to visit the probationer at the probationer's home or elsewhere;
- 267 (5) Work faithfully at suitable employment insofar as may be possible;
- 268 (6) Remain within a specified location; provided, however, that the court shall not banish
 269 a probationer to any area within this state:
- 270 (A) That does not consist of at least one entire judicial circuit as described by Code
 271 Section 15-6-1; or
- 272 (B) In which any service or program in which the probationer must participate as a
 273 condition of probation is not available;
- 274 (7) Make reparation or restitution to any aggrieved person for the damage or loss caused
 275 by the probationer's offense, in an amount to be determined by the court. Unless

276 otherwise provided by law, no reparation or restitution to any aggrieved person for the
 277 damage or loss caused by the probationer's offense shall be made if the amount is in
 278 dispute unless the same has been adjudicated;

279 (8) Make reparation or restitution as reimbursement to a municipality or county for the
 280 payment for medical care furnished the person while incarcerated pursuant to the
 281 provisions of Article 3 of Chapter 4 of this title. No reparation or restitution to a local
 282 governmental unit for the provision of medical care shall be made if the amount is in
 283 dispute unless the same has been adjudicated;

284 (9) Repay the costs incurred by any municipality or county for wrongful actions by an
 285 inmate covered under the provisions of paragraph (1) of subsection (a) of Code
 286 Section 42-4-71;

287 (10) Support the probationer's legal dependents to the best of the probationer's ability;

288 (11) Violate no local, state, or federal laws and be of general good behavior;

289 (12) If permitted to move or travel to another state, agree to waive extradition from any
 290 jurisdiction where the probationer may be found and not contest any effort by any
 291 jurisdiction to return the probationer to this state;

292 (13) Submit to evaluations and testing relating to rehabilitation and participate in and
 293 successfully complete rehabilitative programming as directed by DCS;

294 (14) Wear a device capable of tracking the location of the probationer by means
 295 including electronic surveillance or global positioning satellite systems. DCS shall assess
 296 and collect fees from the probationer for such monitoring at levels set by regulation of
 297 the Board of Community Supervision;

298 (15) Complete a residential or nonresidential program for substance abuse or mental
 299 health treatment as indicated by a risk and needs assessment;

300 (16) Agree to the imposition of graduated sanctions when, in the discretion of the officer,
 301 the probationer's behavior warrants a graduated sanction; and

302 (17) Pay for the cost of drug screening. DCS shall assess and collect fees from the
 303 probationer for such screening at levels set by regulation of the Board of Community
 304 Supervision."

305 **SECTION 1-6.**

306 Said title is further amended in Code Section 42-8-37, relating to effect of termination of
 307 probated portion of sentence, review of cases of persons receiving probated sentence, and
 308 reports, by adding a new subsection to read as follows:

309 "(e)(1) When a probationer is on probation for life as provided for in Code
 310 Section 17-10-6.2, DCS shall file a petition to terminate his or her probation if, after
 311 serving ten years on probation, the probationer has:

- 312 (A) Paid all restitution owed;
 313 (B) Not had his or her probation revoked during such period; and
 314 (C) Not been arrested for anything other than a nonserious traffic offense as defined
 315 in Code Section 35-3-37.
- 316 (2) When the court is presented with such petition, it shall take whatever action it
 317 determines would be for the best interest of justice and the welfare of society. When such
 318 petition is unopposed, the court shall issue an order as soon as possible or otherwise set
 319 the matter for a hearing within 90 days of receiving such petition.
- 320 (3) This subsection is intended to be retroactive and applied to any probationer under the
 321 supervision of DCS.
- 322 (4) If a petition for a probationer who is on probation for life as provided for in Code
 323 Section 17-10-6.2 is not granted, a petition shall be filed every five years thereafter
 324 where the probationer meets the requirements under paragraph (1) of this subsection."

325 **SECTION 1-7.**

326 Said title is further amended in Code Section 42-9-53, relating to preservation of documents,
 327 classification of information and documents, divulgence of confidential state secrets, and
 328 conduct of hearings, by revising paragraph (2) of subsection (b) as follows:

329 "(2) The department may make supervision records of the department available to
 330 officials employed with the Department of Corrections and the Sexual Offender
 331 ~~Registration Risk~~ Review Board, provided that the same shall remain confidential and not
 332 available to any other person or subject to subpoena unless declassified by the
 333 commissioner of community supervision."

334 **PART II**

335 **SECTION 2-1.**

336 Code Section 16-7-29 of the Official Code of Georgia Annotated, relating to interference
 337 with electronic monitoring devices, "electronic monitoring device" defined, and penalty, is
 338 amended by revising subsection (b) as follows:

339 "(b) It shall be unlawful for any person to knowingly and without authority remove,
 340 destroy, or circumvent the operation of an electronic monitoring device which is being used
 341 for the purpose of monitoring a person who is:

- 342 (1) Complying with a home arrest program as set forth in Code Section 42-1-8;
 343 (2) Wearing an electronic monitoring device as a condition of bond or pretrial release;
 344 (3) Wearing an electronic monitoring device as a condition of probation; or
 345 (4) Wearing an electronic monitoring device as a condition of parole; ~~or~~

346 ~~(5) Wearing an electronic monitoring device as required in Code Section 42-1-14."~~

347 **PART III**
348 **SECTION 3-1.**

349 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
350 appellate practice, is amended in Code Section 5-6-35, relating to cases requiring application
351 for appeal, requirements for application, exhibits, response, issuance of appellate court order
352 regarding appeal, procedure, supersedeas, jurisdiction of appeal, and appeals involving
353 nonmonetary judgments in custody cases, by revising paragraph (5.1) of subsection (a) as
354 follows:

355 "(5.1) Appeals from decisions of superior courts reviewing decisions of the Sexual
356 Offender ~~Registration~~ Risk Review Board;"

357 **SECTION 3-2.**

358 Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
359 general provisions regarding the Georgia Bureau of Investigation, is amended in Code
360 Section 35-3-4, relating to powers and duties of bureau generally, by revising paragraph (15)
361 of subsection (a) as follows:

362 "~~(15)(A) Acquire, collect, analyze, and provide to the board any information~~ Provide
363 to the board upon request an analysis of criminal history record information as defined
364 in subparagraph (A) of paragraph (4) of Code Section 35-3-30, which will assist the
365 board in determining a sexual offender's risk assessment classification in accordance
366 with the board's duties as specified in Code Section 42-1-14; ~~including, but not limited~~
367 ~~to, obtaining:~~

368 ~~(i) Incident, investigative, supplemental, and arrest reports from law enforcement~~
369 ~~agencies;~~

370 ~~(ii) Records from clerks of court;~~

371 ~~(iii) Records and information maintained by prosecuting attorneys;~~

372 ~~(iv) Records maintained by state agencies, provided that any records provided by the~~
373 ~~State Board of Pardons and Paroles that are classified as confidential state secrets~~
374 ~~pursuant to Code Section 42-9-53 shall remain confidential and shall not be made~~
375 ~~available to any other person or entity or be subject to subpoena unless declassified~~
376 ~~by the State Board of Pardons and Paroles; and~~

377 ~~(v) Other documents or information as requested by the board.~~

378 (B) As used in this paragraph, the term:

379 (i) 'Board' means the Sexual Offender ~~Registration~~ Risk Review Board.

380 (ii) 'Risk assessment classification' means the level into which a sexual offender is
381 placed based on the board's assessment.

382 (iii) 'Sexual offender' has the same meaning as set forth in Code Section 42-1-12."

383 **PART IV**

384 **SECTION 4-1.**

385 Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses,
386 is amended in Code Section 16-6-2, relating to sodomy, aggravated sodomy, and medical
387 expenses, by adding a new subsection to read as follows:

388 "(e) When the alleged victim is under the age of 16 years, consent of the victim shall not
389 be a defense to a prosecution under this Code section."

390 **SECTION 4-2.**

391 Said chapter is further amended in Code Section 16-6-4, relating to child molestation and
392 aggravated child molestation, by adding a new subsection to read as follows:

393 "(f) Consent of the victim shall not be a defense to a prosecution under this Code section."

394 **SECTION 4-3.**

395 Said chapter is further amended in Code Section 16-6-22.1, relating to sexual battery, by
396 adding a new subsection to read as follows:

397 "(f) When the alleged victim is under the age of 16 years, consent of the victim shall not
398 be a defense to a prosecution under this Code section."

399 **SECTION 4-4.**

400 Said chapter is further amended in Code Section 16-6-22.2, relating to aggravated sexual
401 battery, by adding a new subsection to read as follows:

402 "(d) When the alleged victim is under the age of 16 years, consent of the victim shall not
403 be a defense to a prosecution under this Code section."

404 **PART V**

405 **SECTION 5-1.**

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

407 **SECTION 5-2.**

408 Chapter 24 of Title 15 of the Official Code of Georgia Annotated, relating to sexual assault
 409 protocol, is amended by revising Code Section 15-24-2, relating to establishment of sexual
 410 assault protocol and committee, representatives to committee, and annual meeting and
 411 review, by adding a new subsection to read as follows:

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

417 **SECTION 5-3.**

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

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

428 **SECTION 5-4.**

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

430 "17-5-74.

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

434 (b) The Criminal Justice Coordinating Council shall create and operate a state-wide sexual
 435 assault kit tracking system. The council may contract with state or nonstate entities,
 436 including, but not limited to, private software and technology providers, for the creation,
 437 operation, and maintenance of the system.

438 (c) The state-wide sexual assault kit tracking system shall:

439 (1) Track the location and status of sexual assault kits throughout the criminal justice
 440 process, including the initial collection in examinations performed at medical facilities,

441 receipt and storage at law enforcement agencies, receipt and analysis at forensic
442 laboratories, and storage and any destruction after completion of analysis;
443 (2) Designate sexual assault kits as unreported or reported;
444 (3) Allow medical facilities performing sexual assault forensic examinations, law
445 enforcement agencies, prosecutors, the Division of Forensic Sciences of the Georgia
446 Bureau of Investigation, and other entities having custody of sexual assault kits to update
447 and track the status and location of sexual assault kits;
448 (4) Allow victims of sexual assault to anonymously track or receive updates regarding
449 the status of their sexual assault kits; and
450 (5) Use electronic technology or technologies allowing continuous access.

451 (d) The Criminal Justice Coordinating Council may use a phased implementation process
452 in order to launch the system and facilitate entry and use of the system for required
453 participants. The council may phase initial participation according to region, volume, or
454 other appropriate classifications. All entities having custody of sexual assault kits shall
455 fully participate in the system no later than June 1, 2021. The council shall submit a report
456 on the current status and plan for launching the system, including the plan for phased
457 implementation, to the appropriate committees of the legislature and the Governor no later
458 than January 1, 2021.

459 (e) The Criminal Justice Coordinating Council shall submit a semiannual report on the
460 state-wide sexual assault kit tracking system to the appropriate committees of the
461 legislature and the Governor. The council may publish the current report on its website.
462 The first report shall be due on or before June 30, 2021, and subsequent reports are due on
463 or before June 30 and on or before December 31 of each year. The report shall include the
464 following information for the entire state and by jurisdiction:

465 (1) The total number of sexual assault kits in the system;
466 (2) The total and semiannual number of sexual assault kits where forensic analysis has
467 been completed;
468 (3) The number of sexual assault kits added to the system in the reporting period;
469 (4) The total and semiannual number of sexual assault kits where forensic analysis has
470 been requested but not completed;
471 (5) The average and median length of time for sexual assault kits to be submitted for
472 forensic analysis after being added to the system, including separate sets of data for all
473 sexual assault kits in the system and for sexual assault kits added to the system in the
474 reporting period;
475 (6) The average and median length of time for forensic analysis to be completed on
476 sexual assault kits after being submitted for analysis, including separate sets of data for

477 all sexual assault kits in the system and for sexual assault kits added to the system in the
 478 reporting period;
 479 (7) The total and semiannual number of sexual assault kits destroyed or removed from
 480 the system;
 481 (8) The total number of sexual assault kits where forensic analysis has not been
 482 completed and six months or more have passed since those sexual assault kits were added
 483 to the system; and
 484 (9) The total number of sexual assault kits where forensic analysis has not been
 485 completed and one year or more has passed since those sexual assault kits were added to
 486 the system.
 487 (f) For the purposes of reports under subsection (e) of this Code section, a sexual assault
 488 kit shall be assigned to the jurisdiction associated with the law enforcement agency
 489 anticipated to receive the sexual assault kit or otherwise having custody of the sexual
 490 assault kit.
 491 (g) Any public agency or entity, including its officials and employees, and any hospital
 492 and its employees providing services to victims of sexual assault may not be held civilly
 493 liable for damages arising from any release of information or the failure to release
 494 information related to the state-wide sexual assault kit tracking system, so long as the
 495 release was without gross negligence.
 496 (h) The Criminal Justice Coordinating Council shall adopt rules as necessary to implement
 497 this Code section."

498 **SECTION 5-5.**

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

502 "35-1-23.

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

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

508 (c) Each law enforcement agency that investigates an allegation of rape as defined in Code
 509 Section 16-6-1, aggravated sodomy as defined in Code Section 16-6-2, or aggravated
 510 assault with intent to rape as defined in Code Section 16-5-21, in which the alleged
 511 perpetrator of the assault or offense is unrelated to the victim or is known to be a serial

512 sexual offender, shall enter into the data base the following information regarding such
 513 investigation, as available:

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

515 (2) The specific crime being investigated;

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

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

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

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

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

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

531 **SECTION 5-6.**

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

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

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

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

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

542 **SECTION 5-7.**

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

545 "43-34-47.

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

547 (1) 'Health care professional' means:

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

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

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

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

552 (b) A health care professional shall report the name of a physician to the board if the health

553 care professional has reasonable cause to believe that such physician has committed sexual

554 assault on a patient. A health care professional shall not be required to duplicate a report

555 if he or she has reasonable cause to believe that such report has been made to the board.

556 A health care professional shall not be required to report a physician to the board under this

557 Code section as a result of professional knowledge obtained in the course of the health care

558 professional-patient relationship when the physician is the patient.

559 (c) No health care professional required to report a physician to the board under this Code

560 section who in good faith either reports or fails to report shall be subject to civil or criminal

561 liability or discipline for unprofessional conduct for such action or inaction."

562 **SECTION 5-8.**

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

566 "43-34A-9.

567 (a) As used in this Code section, the term 'sexual assault' shall have the same meaning as

568 in Code Section 15-24-1.

569 ~~(a)~~(b) On January 1 of each year, the board shall compile a report for the Governor and
570 General Assembly containing a statistical and comparative data analysis using information
571 obtained from the physician profiles in addition to other information collected by the board.

572 The board shall not be required to distribute copies of the report to the Governor or
573 members of the General Assembly but shall provide notification of the availability of the
574 report in the manner which it deems to be the most effective and efficient.

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

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

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

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

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

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

583 (6) The number of physicians for whom the board has conducted investigations for
584 committing an act of sexual assault on a patient and the outcome of the investigation
585 which shall include whether it refused, revoked, or suspended a license or issued a private
586 or public disciplinary order."

587 **PART VI**

588 **SECTION 6-1.**

589 This Act shall apply to offenses that occur on and after July 1, 2020.

590 **SECTION 6-2.**

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