

House Bill 255

By: Representatives Holcomb of the 81st, Efstoration of the 104th, Hitchens of the 161st, Oliver of the 82nd, Hugley of the 136th, 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 provide for a definition; to provide for reports; to amend Chapter 1 of Title 35 of
7 the Official Code of Georgia Annotated, relating to general provisions regarding law
8 enforcement officers and agencies, so as to require law enforcement agencies to enter certain
9 information into the Violent Criminal Apprehension Program established and maintained by
10 the Federal Bureau of Investigation; to provide for a definition; to provide for applicability;
11 to amend Chapter 6A of Title 35 of the Official Code of Georgia Annotated, relating to the
12 Criminal Justice Coordinating Council, so as to create the Forensic Medical Examination
13 Advisory Committee; to provide for its membership, appointment, terms of office, and filling
14 of vacancies; to provide for its duties; to require certain certifications of sexual assault nurse
15 examiners as a condition for reimbursements; to require the approval of training programs
16 for sexual assault nurse examiners; to amend Chapter 34 of Title 43 of the Official Code of
17 Georgia Annotated, relating to physicians, physician assistants, and others, so as to provide
18 for the refusal, suspension, or revocation of the license of a physician who has committed a

19 sexual assault on a patient; to provide for mandatory reporting by health care professionals
20 who have reasonable cause to believe that a physician has committed a sexual assault on a
21 patient; to provide for definitions; to provide for limited liability; to amend Chapter 34A of
22 Title 43 of the Official Code of Georgia Annotated, relating to patient right to know, so as
23 to provide for annual reporting to the General Assembly of the number of physicians
24 investigated or disciplined for the sexual assault of patients; to provide for definitions; to
25 provide a short title; to provide for related matters; to repeal conflicting laws; and for other
26 purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 **SECTION 1.**

29 This Act shall be known and may be cited as the "Sexual Assault Reform Act of 2021."

30 **SECTION 2.**

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

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

40 **SECTION 3.**

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

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

51 **SECTION 4.**

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

53 "17-5-74.

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

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

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

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

- 66 (2) Designate sexual assault kits as unreported or reported;
67 (3) Allow medical facilities performing sexual assault forensic examinations, law
68 enforcement agencies, prosecutors, the Division of Forensic Sciences of the Georgia
69 Bureau of Investigation, and other entities having custody of sexual assault kits to update
70 and track the status and location of sexual assault kits;
71 (4) Allow victims of sexual assault to anonymously track or receive updates regarding
72 the status of their sexual assault kits; and
73 (5) Use electronic technology or technologies allowing continuous access.
74 (d) The Criminal Justice Coordinating Council may use a phased implementation process
75 in order to launch the sexual assault kit tracking system and facilitate entry and use of the
76 system for required participants. The council may phase initial participation according to
77 region, volume, or other appropriate classifications. All entities having custody of sexual
78 assault kits shall fully participate in the system no later than one year following the
79 effective date of this Code section. The council shall submit a report on the current status
80 and plan for launching the system, including the plan for phased implementation, to the
81 appropriate committees of the legislature and the Governor no later than January 1, 2022.
82 (e) The Criminal Justice Coordinating Council shall submit a report on the state-wide
83 sexual assault kit tracking system to the appropriate committees of the legislature and the
84 Governor. The council may publish the current report on its web-site. The first report shall
85 be submitted on or before December 31, 2022, and subsequent reports are to be submitted
86 on or before December 31 of each year. Each report shall include the following:
87 (1) The number of sexual assault kits used by collection sites to conduct forensic medical
88 examinations of assault victims;
89 (2) Of the sexual assault kits used by collection sites to conduct forensic medical
90 examinations, the number of sexual assault kits for which a sexual assault has been
91 reported to law enforcement, sorted by law enforcement agency;

- 92 (3) The average time for each law enforcement agency to collect reported sexual assault
93 kits from collection sites;
- 94 (4) Of the sexual assault kits generated for reported cases, the number of sexual assault
95 kits submitted to a laboratory for forensic testing;
- 96 (5) Of the sexual assault kits submitted for forensic testing, the number of kits for which
97 forensic testing has been completed;
- 98 (6) The number of sexual assault kits for which a sexual assault has not been reported
99 to law enforcement; and
- 100 (7) The jurisdictions in which reported sexual assault kits have not been submitted to the
101 Division of Forensic Services of the Georgia Bureau of Investigation in accordance with
102 Code Section 35-1-2.
- 103 (f) For the purpose of reports submitted under subsection (e) of this section, a sexual
104 assault kit shall be assigned to the jurisdiction associated with the law enforcement agency
105 anticipated to receive the sexual assault kit or otherwise having custody of the sexual
106 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 state-wide 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 6A of Title 35 of the Official Code of Georgia Annotated, relating to the Criminal
149 Justice Coordinating Council, is amended by adding a new Code section to read as follows:

150 "35-6A-15.

151 (a) There is created the Forensic Medical Examination Advisory Committee which shall
152 be composed of nine members.

153 (b) The members of the committee shall be the State Sexual Assault Nurse Examiner
154 Coordinator and eight other citizens of this state appointed by the Governor. Of the
155 members appointed by the Governor, one shall be a sexual assault nurse examiner who
156 holds a SANE-A and SANE-P certification from the International Association of Forensic
157 Nurses, one shall be a representative from the Georgia Board of Nursing, one shall be a
158 physician or licensed nurse practitioner, one shall be a peace officer certified by the
159 Georgia Peace Officer Standards and Training Council, one shall be a prosecuting attorney,
160 one shall be employed by the Division of Forensic Services of the Georgia Bureau of
161 Investigation, one shall be a victims' rights advocate, and one shall be a citizen. The
162 Governor shall make the initial appointments not later than July 1, 2021, and shall appoint
163 two members for a one-year term of office, two members for two-year terms of office, two
164 members for three-year terms of office, and two members for four-year terms of office,
165 which shall be specified in each member's appointment. Thereafter, successors shall be
166 appointed to four-year terms of office. Vacancies shall be filled by appointment of the
167 Governor for the unexpired term. Initial terms of office shall begin on July 1, 2021.

168 (c) The committee shall establish by rule and regulation criteria for the issuance and
169 maintenance of certificates for sexual assault nurse examiners in this state. Certification

170 by the committee as a sexual assault nurse examiner shall be evidenced by the issuance of
171 an appropriate certificate by the committee and shall be required for forensic medical
172 examination reimbursements for forensic medical examinations performed by sexual
173 assault nurse examiners who begin practice in this state on or after August 1, 2021. Sexual
174 assault nurse examiners practicing in this state prior to August 1, 2021, shall have until
175 January 1, 2022, to apply for certification. Nurses entering the state on or after August 1,
176 2021, and who intend to practice as a sexual assault nurse examiner shall apply for
177 certification as a sexual assault nurse examiner prior to beginning practice as a sexual
178 assault nurse examiner to be eligible for forensic medical examination reimbursement. The
179 Victims Compensation Division of the Criminal Justice Coordinating Council shall have
180 the authority to make exceptions for any reimbursement by rule or regulation.

181 (d) On and after July 1, 2021, persons or organizations that provide sexual assault nurse
182 examiner training in this state shall register and receive approval from the State Sexual
183 Assault Nurse Examiner Coordinator prior to offering such training. Such persons or
184 organizations shall submit the locations and dates of the proposed training and the training
185 content for all adult/adolescent and pediatric didactic training for approval by the State
186 Sexual Assault Nurse Examiner Coordinator. Such persons or organizations shall report
187 to the Criminal Justice Coordinating Council on completed training with such information
188 and in such manner as directed by the Criminal Justice Coordinating Council.

189 (e) The committee shall also act as an advisory committee to assist the Criminal Justice
190 Coordinating Council in developing best practice recommendations for forensic medical
191 providers in this state."

192 **SECTION 7.**

193 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,
194 physician assistants, and others, is amended by adding a new subsection to Code Section
195 43-34-8, relating to the authority of the Georgia Composite Medical Board to refuse license,
196 certificate, or permit or issue discipline, to read as follows:

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

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

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

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

203 **SECTION 8.**

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

206 "43-34-47.

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

208 (1) 'Health care professional' means:

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

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

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

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

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

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

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

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

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

218 Code section as a result of professional knowledge obtained in the course of the health care
 219 professional-patient relationship when the physician is the patient.
 220 (c) No health care professional required to report a physician to the board under this Code
 221 section who in good faith either reports or fails to report shall be subject to civil or criminal
 222 liability or discipline for unprofessional conduct for such action or inaction."

223 **SECTION 9.**

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

227 "43-34A-9.

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

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

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

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

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

- 239 (1) The number of physicians for which it has created physician profiles;
 240 (2) The specialty board certification of such physicians;
 241 (3) The geographic regions of the primary practices;
 242 (4) The number of physicians participating in the Medicaid program; ~~and~~

243 (5) The number of physicians carrying any medical malpractice insurance and the
244 specialty and current hospital privileges of the physicians not carrying such insurance and
245 whether such physicians are actively seeing patients; and
246 (6) The number of physicians for which the board has conducted investigations for
247 committing an act of sexual assault, sexual abuse, misconduct, or exploitation of a
248 patient, and the outcome of the investigation which shall include whether it refused,
249 revoked, or suspended a license, or issued a private or public disciplinary order."

250

SECTION 10.

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