

House Bill 1397

By: Representatives Cooper of the 45th, Frye of the 122nd, Reeves of the 99th, Hagan of the 156th, and Roberts of the 52nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated,
2 relating to investigating sexual assault, so as to provide for implied consent to a drug
3 facilitated sexual assault examination for unconscious victims of alleged sexual assault; to
4 provide for circumstances; to provide for evidence; to provide for a definition; to provide for
5 related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 4 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
9 investigating sexual assault, is amended by revising Code Section 17-5-70, relating to
10 definitions, as follows:

11 "17-5-70.

12 As used in this article, the term:

13 (1) 'Drug facilitated sexual assault examination' means a laboratory test designed to
14 identify the presence or absence of common drug classes known to be used in cases of
15 sexual assault and would include a specialized toxicology screen, typically using blood

16 and urine, to detect substances that could compromise an individual's ability to consent
17 to sexual activity.

18 ~~(1)~~(2) 'Forensic medical examination' means an examination by a health care provider
19 of a person who is a victim of a sexual assault. Such examination shall include a physical
20 examination, documentation of biological and physical findings, and collection of
21 physical evidence from the victim.

22 ~~(2)~~(3) 'Investigating law enforcement agency' means the law enforcement agency
23 responsible for the investigation of the alleged sexual assault.

24 ~~(3)~~(4) 'Sexual assault' means rape, sodomy, aggravated sodomy, statutory rape, child
25 molestation, aggravated child molestation, sexual assault against a person in custody,
26 sexual assault against a person detained in a hospital or other institution, sexual assault
27 by a practitioner of psychotherapy against a patient, incest, bestiality, sexual battery, and
28 aggravated sexual battery as those terms and offenses are set forth and defined in
29 Chapter 6 of Title 16."

30 **SECTION 2.**

31 Said article is further amended by revising Code Section 17-5-72, relating to the right to free
32 forensic medical examination, as follows:

33 "17-5-72.

34 A victim shall have the right to have a forensic medical examination or a drug facilitated
35 sexual assault examination regardless of whether the victim participates in the criminal
36 justice system or cooperates with law enforcement in pursuing prosecution of the
37 underlying crime. A victim shall not be required to pay, directly or indirectly, for the cost
38 of a forensic medical examination. The cost of a forensic medical examination shall be
39 paid for by the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of
40 this title."

41 **SECTION 3.**

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

43 "17-5-75.44 (a)(1) A licensed hospital or licensed healthcare practitioner may perform a drug
45 facilitated sexual assault examination in accordance with the provisions of this Code
46 section when:47 (A) A suspected victim of sexual assault is unconscious; or48 (B) A reasonable person could conclude that exigent circumstances justify conducting
49 a forensic medical examination or drug facilitated sexual assault examination.50 (2) Forensic examinations conducted under this Code section shall be performed and any
51 evidence retrieved as a result of such examinations may or may not be used for future law
52 enforcement purposes in accordance with the patient's discretion once such patient is
53 conscious.54 (b) Any person who believes that he or she has been a victim of a sexual assault and, in
55 good faith, seeks medical assistance for himself or herself shall not be arrested, charged,
56 or prosecuted for any criminal violation if the evidence for the arrest, charge, or
57 prosecution of such violation resulted solely from seeking such medical assistance."58 **SECTION 4.**

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