

House Bill 255 (AS PASSED HOUSE AND SENATE)

By: Representatives Holcomb of the 81st, Efstrotation 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 the removal of information from such
11 program; to provide for hearing; to provide for a definition; to provide for applicability; to
12 provide a short title; to provide for related matters; to repeal conflicting laws; and for other
13 purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

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

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17 **SECTION 2.**

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

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

27 **SECTION 3.**

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

31 "(b) If the victim does not cooperate with law enforcement in the investigation or
32 prosecution of an alleged sexual assault chooses not to report the alleged sexual assault to
33 law enforcement at the time of evidence collection, the investigating law enforcement
34 agency with jurisdiction shall maintain any physical evidence collected as a result of such
35 alleged sexual assault that contains biological material, including, but not limited to, stains,
36 fluids, or hair samples that relate to the identity of the perpetrator of the alleged sexual
37 assault, for not less than 12 months from the date any such physical evidence is collected."

38 **SECTION 4.**

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

40 "17-5-74.

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

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

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

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

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

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

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

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

61 (d) The Criminal Justice Coordinating Council may use a phased implementation process
62 in order to launch the sexual assault kit tracking system and facilitate entry and use of the
63 system for required participants. The council may phase initial participation according to
64 region, volume, or other appropriate classifications. All law enforcement agencies and
65 other entities having custody of sexual assault kits shall register for and utilize the system
66 in order to fully participate no later than one year following the effective date of this Code

67 section. The council shall submit a report on the current status and plan for launching the
68 system, including the plan for phased implementation, to the appropriate committees of the
69 legislature and the Governor no later than January 1, 2022.

70 (e) The Criminal Justice Coordinating Council shall submit a report on the state-wide
71 sexual assault kit tracking system to the appropriate committees of the legislature and the
72 Governor. The council shall publish the current report on its website. The first report shall
73 be submitted on or before December 31, 2022, and subsequent reports are to be submitted
74 on or before December 31 of each year. Each report shall include the following:

75 (1) The number of sexual assault kits used by collection sites to conduct forensic medical
76 examinations of assault victims;

77 (2) Of the sexual assault kits used by collection sites to conduct forensic medical
78 examinations, the number of sexual assault kits for which a sexual assault has been
79 reported to law enforcement, sorted by law enforcement agency;

80 (3) The average time for each law enforcement agency to collect reported sexual assault
81 kits from collection sites;

82 (4) Of the sexual assault kits generated for reported cases, the number of sexual assault
83 kits submitted to a laboratory for forensic testing;

84 (5) Of the sexual assault kits submitted for forensic testing, the number of kits for which
85 forensic testing has been completed;

86 (6) The number of sexual assault kits for which a sexual assault has not been reported
87 to law enforcement; and

88 (7) The jurisdictions in which reported sexual assault kits have not been submitted to the
89 Division of Forensic Services of the Georgia Bureau of Investigation in accordance with
90 Code Section 35-1-2.

91 (f) For the purpose of reports submitted under subsection (e) of this Code section, a sexual
92 assault kit shall be assigned to the jurisdiction associated with the law enforcement agency

93 anticipated to receive the sexual assault kit or otherwise having custody of the sexual
94 assault kit.

95 (g) Any public agency or entity, including its officials and employees, and any hospital
96 and its employees providing services to victims of sexual assault shall not be held civilly
97 liable for damages arising from any release of information or the failure to release
98 information related to the state-wide sexual assault kit tracking system, so long as the
99 release was without gross negligence.

100 (h) The Criminal Justice Coordinating Council shall adopt rules as necessary to implement
101 this Code section."

102 **SECTION 5.**

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

106 "35-1-23.

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

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

112 (c) Each law enforcement agency that investigates a homicide or attempted homicide in
113 which the actions of the perpetrator are known or suspected to be serial in nature or are
114 random or sexually oriented; a rape, aggravated sodomy, or aggravated assault with the
115 intent to rape in which the actions of the perpetrator are known or suspected to be serial in
116 nature or in which the assault was committed by a stranger; a missing person case in which
117 the circumstances indicate a strong possibility of foul play; or a case involving unidentified

118 human remains from a known or suspected homicide shall enter into the data base the
119 following information regarding such investigation, as available:

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

121 (2) The specific crime being investigated;

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

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

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

129 (d)(1) Any individual who was deemed an alleged perpetrator and who had any
130 information collected pursuant to subsection (c) of this Code section may seek removal
131 of such information by:

132 (A) Submitting a request in writing for the removal of all such information, along with
133 all supporting documentation regarding such request, to the investigating law
134 enforcement agency; or

135 (B) If the investigating law enforcement agency denies the request to remove such
136 information, the individual may file a petition of removal with the superior court in the
137 jurisdiction of the investigating law enforcement agency.

138 (2) In considering a petition of removal pursuant to this subsection, the court shall
139 consider:

140 (A) Any evidence introduced by the petitioner;

141 (B) Any evidence introduced by the investigating law enforcement agency of the
142 jurisdiction where the petition is filed; and

143 (C) Any other relevant evidence.

144 (3) The court shall order a hearing on the petition if requested by the petitioner. The
145 court may issue an order removing the petitioner's name and information from the data
146 base if the court finds by a preponderance of the evidence that the petitioner's information
147 should be removed from the data base. The court shall send a copy of any order directing
148 the removal of the petitioner's name and information from the data base to the
149 investigating law enforcement agency.

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

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

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

158 **SECTION 6.**

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