House Bill 255 (AS PASSED HOUSE AND SENATE)
By: Representatives Holcomb of the 81\textsuperscript{st}, Efstration of the 104\textsuperscript{th}, Hitchens of the 161\textsuperscript{st}, Oliver of the 82\textsuperscript{nd}, Hugley of the 136\textsuperscript{th}, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 24 of Title 15 of the Official Code of Georgia Annotated, relating to sexual assault protocol, so as to require certain certifications to be filed; to amend Article 4 of Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to investigating sexual assault, so as to provide for the retention of evidence of sexual assault when the victim chooses not to immediately report the assault; to provide for a sexual assault case tracking system; to provide for a definition; to provide for reports; to amend Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions regarding law enforcement officers and agencies, so as to require law enforcement agencies to enter certain information into the Violent Criminal Apprehension Program established and maintained by the Federal Bureau of Investigation; to provide for the removal of information from such program; to provide for hearing; to provide for a definition; to provide for applicability; to provide a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

H. B. 255
- 1 -
SECTION 2.

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

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

SECTION 3.

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

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

SECTION 4.

Said article is further amended by adding a new Code section to read as follows:
(a) For the purposes of this Code section, the term 'unreported sexual assault kit' means a sexual assault kit collected from a victim who has consented to the collection of the sexual assault kit but who has not reported the alleged crime to law enforcement.

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

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

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

2. Designate sexual assault kits as unreported or reported;

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

4. Allow victims of sexual assault to anonymously track or receive updates regarding the status of their sexual assault kits; and

5. Use electronic technology or technologies allowing continuous access.

(d) The Criminal Justice Coordinating Council may use a phased implementation process in order to launch the sexual assault kit tracking system and facilitate entry and use of the system for required participants. The council may phase initial participation according to region, volume, or other appropriate classifications. All law enforcement agencies and other entities having custody of sexual assault kits shall register for and utilize the system in order to fully participate no later than one year following the effective date of this Code.
section. The council shall submit a report on the current status and plan for launching the
system, including the plan for phased implementation, to the appropriate committees of the
legislature and the Governor no later than January 1, 2022.
(e) The Criminal Justice Coordinating Council shall submit a report on the state-wide
sexual assault kit tracking system to the appropriate committees of the legislature and the
Governor. The council shall publish the current report on its website. The first report shall
be submitted on or before December 31, 2022, and subsequent reports are to be submitted
on or before December 31 of each year. Each report shall include the following:
(1) The number of sexual assault kits used by collection sites to conduct forensic medical
examinations of assault victims;
(2) Of the sexual assault kits used by collection sites to conduct forensic medical
examinations, the number of sexual assault kits for which a sexual assault has been
reported to law enforcement, sorted by law enforcement agency;
(3) The average time for each law enforcement agency to collect reported sexual assault
kits from collection sites;
(4) Of the sexual assault kits generated for reported cases, the number of sexual assault
kits submitted to a laboratory for forensic testing;
(5) Of the sexual assault kits submitted for forensic testing, the number of kits for which
forensic testing has been completed;
(6) The number of sexual assault kits for which a sexual assault has not been reported
to law enforcement; and
(7) The jurisdictions in which reported sexual assault kits have not been submitted to the
Division of Forensic Services of the Georgia Bureau of Investigation in accordance with
Code Section 35-1-2.
(f) For the purpose of reports submitted under subsection (e) of this Code section, a sexual
assault kit shall be assigned to the jurisdiction associated with the law enforcement agency
anticipated to receive the sexual assault kit or otherwise having custody of the sexual assault kit.

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

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

SECTION 5.

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

"35-1-23. (a) As used in this Code section, the term 'data base' means the national data base of the Violent Criminal Apprehension Program established and maintained by the Federal Bureau of Investigation or a successor data base.

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

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

H. B. 255
- 5 -
human remains from a known or suspected homicide shall enter into the data base the following information regarding such investigation, as available:

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

(2) The specific crime being investigated;

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

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

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

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

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

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

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

(A) Any evidence introduced by the petitioner;

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

(C) Any other relevant evidence.
(3) The court shall order a hearing on the petition if requested by the petitioner. The court may issue an order removing the petitioner's name and information from the database if the court finds by a preponderance of the evidence that the petitioner's information should be removed from the database. The court shall send a copy of any order directing the removal of the petitioner's name and information from the database to the investigating law enforcement agency.

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

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

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

SECTION 6.

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