

## House Bill 193

By: Representatives Sainz of the 180<sup>th</sup>, Burchett of the 176<sup>th</sup>, Efstoration of the 104<sup>th</sup>, and Hitchens of the 161<sup>st</sup>

## 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 alleged sexual assault when  
5 the victim chooses not to immediately report such alleged sexual assault; to provide for a  
6 definition; to provide for a sexual assault kit tracking system; to provide for reporting; to  
7 provide for rules; to amend Chapter 1 of Title 35 of the Official Code of Georgia Annotated,  
8 relating to general provisions regarding law enforcement officers and agencies, so as to  
9 require law enforcement agencies to enter certain information into the Violent Criminal  
10 Apprehension Program established and maintained by the Federal Bureau of Investigation;  
11 to provide for a definition; to amend Chapter 34 of Title 43 of the Official Code of Georgia  
12 Annotated, relating to physicians, physician assistants, and others, so as to provide for the  
13 refusal, suspension, or revocation of the license of a physician who has committed a sexual  
14 assault on a patient; to provide for mandatory reporting by health care professionals who  
15 have reasonable cause to believe that a physician has committed a sexual assault on a patient;  
16 to provide for definitions; to provide for limited liability; to amend Chapter 34A of Title 43  
17 of the Official Code of Georgia Annotated, relating to patient right to know, so as to provide  
18 for annual reporting to the General Assembly of the number of physicians investigated or

19 disciplined for the sexual assault of patients; to provide for a definition; to provide a short  
20 title; to provide for related matters; to provide for applicability; to repeal conflicting laws;  
21 and for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

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

25 **SECTION 2.**

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

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

35 **SECTION 3.**

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

39 "(b) If the victim does not cooperate with law enforcement in the investigation or  
40 prosecution of chooses not to immediately report, as is the victim's right, an alleged sexual  
41 assault, the investigating law enforcement agency shall maintain any physical evidence

42 collected as a result of such alleged sexual assault that contains biological material,  
43 including, but not limited to, stains, fluids, or hair samples that relate to the identity of the  
44 perpetrator of the alleged sexual assault, for not less than 12 months from the date any such  
45 physical evidence is collected."

#### 46 SECTION 4.

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

48 "17-5-74.

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

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

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

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

61 (2) Maintain the status of sexual assault kits designating such kits as unreported or  
62 reported;

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

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

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

70 (d) The Criminal Justice Coordinating Council may use a phased implementation process  
71 in order to launch the system and facilitate use of the system for qualified participants. The  
72 council may phase initial participation according to region, volume, or other appropriate  
73 classifications. All entities having custody of sexual assault kits shall fully participate in  
74 the system no later than June 1, 2021. The council shall submit a report on the current  
75 status and plan for launching the system, including the plan for phased implementation, to  
76 the appropriate committees of the legislature and the Governor no later than January 1,  
77 2021.

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

84 (1) The total number of sexual assault kits in the system;

85 (2) The total and semiannual number of sexual assault kits where forensic analysis has  
86 been completed;

87 (3) The number of sexual assault kits added to the system in the reporting period;

88 (4) The total and semiannual number of sexual assault kits where forensic analysis has  
89 been requested but has not been completed;

90 (5) The average and median length of time for sexual assault kits to be submitted for  
91 forensic analysis after being added to the system, including separate sets of data for all  
92 sexual assault kits in the system and for sexual assault kits added to the system in the  
93 reporting period;

- 94 (6) The average and median length of time for forensic analysis to be completed on  
95 sexual assault kits after being submitted for analysis, including separate sets of data for  
96 all sexual assault kits in the system and for sexual assault kits added to the system in the  
97 reporting period;
- 98 (7) The total and semiannual number of sexual assault kits destroyed or removed from  
99 the system;
- 100 (8) The total number of sexual assault kits for which forensic analysis has not been  
101 completed and six months or more have passed since those sexual assault kits were added  
102 to the system; and
- 103 (9) The total number of sexual assault kits for which forensic analysis has not been  
104 completed and one year or more has passed since those sexual assault kits were added to  
105 the system.
- 106 (f) For the purposes of reports under subsection (e) of this Code section, a sexual assault  
107 kit shall be assigned to the jurisdiction associated with the law enforcement agency  
108 anticipated to receive the sexual assault kit or otherwise having custody of the sexual  
109 assault kit.
- 110 (g) Any public agency or entity, including its officials and employees, and any hospital  
111 and its employees providing services to victims of sexual assault may not be held civilly  
112 liable for damages arising from any release of information or the failure to release  
113 information related to the state-wide sexual assault kit tracking system, so long as the  
114 release was without gross negligence.
- 115 (h) The Criminal Justice Coordinating Council shall adopt rules as necessary to implement  
116 this Code section."

117 **SECTION 5.**

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

121 "35-1-23.

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

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

127 (c) Each law enforcement agency that investigates an allegation of rape as defined in Code  
128 Section 16-6-1, aggravated sodomy as defined in Code Section 16-6-2, or aggravated  
129 assault with intent to rape as defined in Code Section 16-5-21, in which the alleged  
130 perpetrator of the assault or offense is unrelated to the victim or is known to be a serial  
131 sexual offender, shall enter into the data base the following information regarding such  
132 investigation, as available:

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

134 (2) The specific crime being investigated;

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

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

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

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

144 (e) This Code section shall apply to any pending investigation of an allegation of rape,  
145 aggravated sodomy, or aggravated assault with intent to rape, regardless of whether the  
146 investigation was commenced before, on, or after the effective date of this Code section.  
147 (f) This Code section shall not apply to offenses when the victim is at least 14 but less  
148 than 16 years of age and the offender is 18 years of age or younger and is not more than  
149 four years older than the victim."

150 **SECTION 6.**

151 Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians,  
152 physicians assistants, and others, is amended by adding a new subsection to Code Section  
153 43-34-8, relating to the authority of the Georgia Composite Medical Board to refuse license,  
154 certificate, or permit or issue discipline, to read as follows:

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

- 157 (1) The board has found, after conducting an investigation, to have committed a sexual  
158 assault on a patient;  
159 (2) Has pleaded guilty to committing a sexual assault on a patient; or  
160 (3) Has been found guilty by a court of law of committing a sexual assault on a patient."

161 **SECTION 7.**

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

164 "43-34-47.

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

166 (1) 'Health care professional' means:

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

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

169 (C) A physician assistant licensed under this chapter.  
170 (2) 'Sexual assault' shall have the same meaning as in Code Section 15-24-1.  
171 (b) A health care professional shall report the name of a physician to the board if such  
172 health care professional has reasonable cause to believe that such physician has committed  
173 sexual assault on a patient. A health care professional shall not be required to duplicate a  
174 report if he or she has reasonable cause to believe that such report has been made to the  
175 board. A health care professional shall not be required to report a physician to the board  
176 under this Code section as a result of professional knowledge obtained in the course of the  
177 health care professional-patient relationship when the physician is the patient.  
178 (c) No health care professional required to report a physician to the board under this Code  
179 section who in good faith either reports or fails to report shall be subject to civil or criminal  
180 liability or discipline for unprofessional conduct for such action or inaction."

181 **SECTION 8.**

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

185 "43-34A-9.

186 (a) As used in this Code section, the term 'sexual assault' shall have the same meaning as  
187 in Code Section 15-24-1.

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

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



- 195 (1) The number of physicians for which it has created physician profiles;  
196 (2) The specialty board certification of such physicians;  
197 (3) The geographic regions of the primary practices;  
198 (4) The number of physicians participating in the Medicaid program; ~~and~~  
199 (5) The number of physicians carrying any medical malpractice insurance and the  
200 specialty and current hospital privileges of the physicians not carrying such insurance and  
201 whether such physicians are actively seeing patients; and  
202 (6) The number of physicians on whom the board has conducted investigations for  
203 committing an act of sexual assault on a patient and the outcome of each investigation  
204 which shall include whether the board refused, revoked, or suspended a license or issued  
205 a private or public disciplinary order."

206 **SECTION 9.**

207 This Act shall apply to offenses that occur on and after July 1, 2021.

208 **SECTION 10.**

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