

House Bill 463

By: Representatives Ballinger of the 23rd, Sainz of the 180th, and Hitchens of the 161st

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 35-3-4 of the Official Code of Georgia Annotated, relating to
2 powers and duties of bureau generally, so as to revise the name of the Sexual Offender
3 Registration Review Board; to amend Title 42 of the Official Code of Georgia Annotated,
4 relating to penal institutions, so as to revise the name of the Sexual Offender Registration
5 Review Board and to revise its composition and to provide for personnel and tasks; to
6 provide for definitions; to provide for sentencing; to provide for assessment; to provide for
7 assessment review; to provide for confidentiality; to provide for re-assessment and review;
8 to provide for petition; to provide for an effective date; to provide for applicability; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **PART I**
12 **SECTION 1-1.**

13 Code Section 35-3-4 of the Official Code of Georgia Annotated, relating to powers and
14 duties of bureau generally, is amended by revising division (15)(B)(i) of subsection (a) as
15 follows:

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16 "(i) 'Board' means the Sexual Offender ~~Registration~~ Risk Review Board."

17 **PART II**

18 **SECTION 2-1.**

19 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 20 in Code Section 42-1-12, relating to State Sexual Offender Registry, by revising
 21 paragraph (5), divisions (10)(B.4)(xvi) through (10)(B.4)(xviii), and paragraphs (12), (13),
 22 and (21) of subsection (a), and by adding new paragraphs; by revising paragraphs (1) and (9)
 23 of subsection (b); and by revising paragraphs (11) through (13) of subsection (i) as follows:

24 "(5) 'Board' means the Sexual Offender ~~Registration~~ Risk Review Board."

25 "(xvi) Electronically furnishing obscene material to minors in violation of Code
 26 Section 16-12-100.1;

27 ~~(xvi)~~(xvii) Computer pornography and child exploitation in violation of Code Section
 28 16-12-100.2;

29 ~~(xvii)~~(xviii) A second or subsequent conviction for obscene telephone contact in
 30 violation of Code Section 16-12-100.3; or

31 ~~(xviii)~~(xix) Any conduct which, by its nature, is a felony sexual offense against a
 32 victim who is a minor or an attempt to commit a felony sexual offense against a
 33 victim who is a minor."

34 "(12) 'Level I risk assessment classification' means, for sexual offenders leveled before
 35 July 1, 2023, the sexual offender is a low sex offense risk and low recidivism risk for
 36 future sexual offenses. For sexual offenders assessed on or after July 1, 2023, such term
 37 means the sexual offender's risk for future sexual offenses is well below average and his
 38 or her recidivism risk for such offenses is highly unlikely, approximately half as likely
 39 to sexually reoffend as an offender with an average risk.

40 (13) 'Level II risk assessment classification' means, for sexual offenders assessed before
41 July 1, 2023, the sexual offender is an intermediate sex offense risk and intermediate
42 recidivism risk for future sexual offenses and includes all sexual offenders who do not
43 meet the criteria for classification either as a sexually dangerous predator or for Level I
44 risk assessment. For sexual offenders assessed on or after July 1, 2023, such term means
45 the sexual offender's risk for future sexual offenses is below average and his or her
46 recidivism risk for such offenses is low, approximately half as likely to sexually reoffend
47 as an offender with an average risk.

48 (13.1) 'Level III risk assessment means, for sexual offenders assessed on or after July 1,
49 2023, the sexual offender's risk for future sexual offenses is average.

50 (13.2) 'Level IV risk assessment classification means, for sexual offenders assessed on
51 or after July 1, 2023, the sexual offender's risk for future sexual offenses is above average
52 and his or her recidivism risk for such offenses is approximately two to three times as
53 likely when compared to an offender with an average risk."

54 "(21) 'Sexually dangerous predator' means a sexual offender:

55 (A) Who was designated as a sexually violent predator between July 1, 1996, and June
56 30, 2006; or

57 (B) ~~Who is determined by the Sexual Offender Registration Review Board to be at risk~~
58 ~~of perpetrating any future dangerous sexual offense.~~

59 (21.1) 'Sexually dangerous predator risk assessment' means, for sexual offenders
60 assessed before July 1, 2023, the sexual offender's is a high sex offense risk and high
61 recidivism risk for future sexual offenses. For sexual offenders assessed on or after July
62 1, 2023, the sexual offender's risk for future sexual offenses is approximately four to eight
63 times as likely when compared to an offender with an average risk."

64 "(1) Inform the sexual offender of the obligation to register, the amount of the
65 ~~registration fee~~ associated fees, and how to maintain registration;"

66 "(9) If required by a court or by Code Section 42-1-14, place any required electronic
 67 monitoring system on the ~~sexually dangerous predator~~ sexual offender and explain its
 68 operation and cost."

69 "(11) Determine the appropriate time of day for reporting by sexual offenders, which
 70 shall be consistent with the reporting requirements of this Code section; and

71 ~~(12) If required by Code Section 42-1-14, place any electronic monitoring system on the~~
 72 ~~sexually dangerous predator and explain its operation and cost; and~~

73 ~~(13)~~(12) Provide current information on names and addresses of all registered sexual
 74 offenders to campus police with jurisdiction for the campus of an institution of higher
 75 education if the campus is within the sheriff's jurisdiction."

76 **SECTION 2-2.**

77 Said title is further amended by revising Code Section 42-1-13, relating to Sexual Offender
 78 Registration Review Board, composition, appointment, administration and duties, and
 79 immunity from liability, as follows:

80 "42-1-13.

81 (a) The Sexual Offender ~~Registration~~ Risk Review Board ~~shall~~ may be composed of one
 82 representative from the Department of Community Supervision, a member of the Board of
 83 Pardons and Paroles; a member of a sheriff's department, a prosecuting attorney, a criminal
 84 defense lawyer, an active member of a police department, a state approved sex offender
 85 treatment provider, a state approved polygraph examiner, a victim advocate; a member of
 86 the Georgia Bureau of Investigation, a member of the Internet Crimes Against Children
 87 (ICAC) Task Force Program, a member of the Department of Juvenile Justice; a member
 88 of the Department of Family and Children Services, an active member of the judiciary, and
 89 a United States Marshal. The three professionals licensed under Title 43 and
 90 knowledgeable in the field of the behavior and treatment of sexual offenders; at least one
 91 representative from a victims' rights advocacy group or agency; and at least two

92 ~~representatives from law enforcement, each of whom is either employed by a law~~
93 ~~enforcement agency as a certified peace officer under Title 35 or retired from such~~
94 ~~employment. The members of the board shall be appointed by the commissioner of~~
95 ~~behavioral health and developmental disabilities for terms of four years. On and after July~~
96 ~~1, 2006, successors to the members of the board shall be appointed by the Governor.~~
97 Members of the board shall take office on the first day of September immediately
98 following the expired term of that office and shall serve for a term of four years and until
99 the appointment of their respective successors. No member shall serve on the board more
100 than two consecutive terms. Vacancies occurring on the board, other than those caused by
101 expiration of a term of office, shall be filled in the same manner as the original appointment
102 to the position vacated for the remainder of the unexpired term and until a successor is
103 appointed. Members shall be entitled to an expense allowance and travel cost
104 reimbursement the same as members of certain other boards and commissions as provided
105 in Code Section 45-7-21.

106 (b) The board shall be attached to the Department of Behavioral Health and
107 Developmental Disabilities for administrative purposes and, provided there is adequate
108 funding, shall:

109 (1) Exercise its quasi-judicial, rule-making, or policy-making functions independently
110 of the department and without approval or control of the department;

111 (2) Prepare its budget, if any, and submit its budgetary requests, if any, through the
112 department; and

113 (3) Hire its own personnel, including, but not limited to, ~~administrative personnel and~~
114 ~~clinical evaluators~~ an executive director to assist with the goals and objectives of the
115 board, oversee operations, and manage the hub of sex offender information. The
116 executive director shall hire administrative staff, clinical evaluators, and investigative
117 analysts necessary to review and classify sexual offenders.

118 (c)(1) The board shall acquire, collect, and analyze information, including, but not
119 limited to, criminal history record information, in determining a sexual offender's risk
120 assessment as provided for under Code Section 42-1-14.

121 (2) The board may employ investigators under the board's administration and supervision
122 to complete the duties provided for under paragraph (1) of this subsection. The Georgia
123 Bureau of Investigation shall maintain at least one position under the bureau's
124 administration and supervision which shall facilitate the provision of summarized
125 criminal history record information to the board from the Georgia Crime Information
126 Center and the National Crime Information Center.

127 (3) In its advisory capacity the board shall:

128 (A) Study matters of punishment, classification, management, and treatment of sexual
129 offenders as determined by clinical evaluators;

130 (B) Conduct studies and gather information and data in order to accomplish its purpose
131 set forth and formulates its recommendations to the Governor, the General Assembly,
132 and agency heads;

133 (C) Audit classifications set by clinical evaluators, at its discretion;

134 (D) Meet in person or remotely not less than quarterly; and

135 (E) Create an annual report to be provided to the General Assembly upon request.

136 (d) Members of the board, clinical evaluators, and investigators shall be immune from
137 liability for good faith conduct under this article."

138 **SECTION 2-3.**

139 Said title is further amended by repealing Code Section 42-1-14, relating to risk assessment
140 classification, classification as "sexually dangerous predator," and electronic monitoring, in
141 its entirety and enacting a new Code Section 42-1-14 to read as follows:

142 "42-1-14.

143 (a)(1) The board's clinical evaluators shall determine the likelihood that a sexual offender
144 with a sex offense conviction in this state will engage in another crime against a victim
145 who is a minor or commit any other dangerous sexual offense. Any sexual offender with
146 a sex offense conviction in this state who changes residence from another state or
147 territory of the United States or any other place to this state and who is not already
148 designated in this state as a sexually dangerous predator, sexual predator, or sexually
149 violent shall register as such and shall only be removed from the state sexual offender
150 registry when verified documentation has been provided showing the sex offender has
151 been removed from the sex offender registry in the sentencing state. If such offender is
152 ordered to community supervision in this state, such offender shall be required to be
153 monitored by an electronic monitoring system at their own expense as provided for in
154 subparagraph (a.1)(5)(C) of Code Section 42-1-29.

155 (2) A sexual offender shall receive a Level I, Level II, Level III, Level IV, or sexually
156 dangerous predator risk assessment classification based upon the board's assessment
157 criteria and by using any other information obtained and reviewed by the board. The
158 sexual offender may provide the board with information, including, but not limited to,
159 psychological evaluations, sexual history polygraph information, treatment history, and
160 personal, social, educational, or work history. If the sexual offender has undergone
161 treatment or supervision through the Department of Corrections or the Department of
162 Community Supervision, such treatment and supervision records shall also be submitted
163 to the board for evaluation. The prosecuting attorney shall provide the board with any
164 information available to assist the board in rendering an opinion, including, but not
165 limited to, criminal history and records related to previous criminal history and shall
166 provide the same information to the sexual offender as was provided to the board. The
167 board shall be authorized to obtain available information from supervision records prior
168 to July 1, 2015, and all public records obtained and electronically retained by the State

169 Board of Pardons and Paroles during its investigation of such sexual offender; provided,
170 however, that if such records are classified as confidential state secrets, such records shall
171 remain confidential in accordance with Code Section 42-9-53 and shall not be made
172 available to any other person or entity or be subject to subpoena unless declassified by
173 the State Board of Pardons and Paroles. Any person divulging or causing to be divulged
174 any confidential state secret shall be guilty of a misdemeanor. The clerk of the court of
175 the appropriate jurisdiction where the sexual offender resides shall send a copy of the
176 order seeking classification for purposes of sentencing and a copy of the sexual offender's
177 conviction to the board and notify the board that a sexual offender's risk assessment
178 evaluation will need to be performed. The board shall render its recommendation for risk
179 assessment classification within:

180 (A) Sixty days of the conclusion of the investigation needed to conduct a risk
181 classification if the sexual offender is being sentenced pursuant to subsection (c) of
182 Code Section 17-10-6.2 or as part of a presentence investigation pursuant to subsection
183 (b) of Code Section 42-8-34;

184 (B) Six months of the conclusion of the investigation to conduct a risk classification
185 if the sexual offender is incarcerated or within a year of release;

186 (C) Sixty days of the conclusion of the investigation needed to conduct a risk
187 classification if the sexual offender is sentenced to a probated or suspended sentence;
188 and;

189 (D) Ninety days if such classification is requested by the court pursuant to a petition
190 filed under Code Section 42-1-19.

191 (3) The board shall notify the sexual offender by first-class mail of its determination of
192 risk assessment classification and shall send a copy of such classification to the Georgia
193 Bureau of Investigation, the Department of Corrections, the State Board of Pardons and
194 Paroles, the Department of Community Supervision, the sheriff of the county in which

195 the sexual offender is registered, and to counsel for the sexual offender and the
196 sentencing court, if applicable.

197 (b) A sexual offender assessed as a Level II risk classification or as a sexually dangerous
198 predator before July 1, 2023, or assessed as a Level IV or sexually dangerous predator risk
199 classification on or after July 1, 2023, may petition the board to reevaluate his or her
200 classification. To file a petition for reevaluation, the sexual offender shall be required to
201 submit his or her written petition for reevaluation to the board within 30 days from the date
202 of the letter notifying the sexual offender of his or her classification. The sexual offender
203 shall have 120 days from the date of the notification letter to submit information as
204 provided in subsection (a) of this Code section in support of such sexual offender's petition
205 for reevaluation. If the sexual offender fails to submit the petition or supporting documents
206 within the time limits provided, the classification shall be final. The board shall notify the
207 sexual offender by first-class mail of its decision on the petition for reevaluation of risk
208 assessment classification and shall send a copy of such notification to the Georgia Bureau
209 of Investigation, the Department of Corrections, the State Board of Pardons and Paroles,
210 the Department of Community Supervision, the sheriff of the county in which the sexual
211 offender is registered, and to counsel for the sexual offender and the sentencing court, if
212 applicable. The sexual offender classified prior to July 1, 2023, may request reevaluation
213 after ten years following his or her initial classification and no more than once every five
214 years thereafter.

215 (c) A sexual offender who is assessed as a Level II risk classification or as a sexually
216 dangerous predator before July 1, 2023, or assessed as a Level IV risk assessment
217 classification or as a sexually dangerous predator on or after July 1, 2023, may file a
218 petition for judicial review of his or her classification within 30 days of the date of the
219 notification letter or, if the sexual offender has requested reevaluation pursuant to
220 subsection (b) of this Code section, within 30 days of the date of the letter denying the
221 petition for reevaluation. The petition for judicial review shall name the board as

222 defendant, and the petition shall be filed in the superior court of the county in which the
223 offices of the board are located. Within 30 days after service of the appeal on the board,
224 the board shall submit a summary of its findings to the court and all involved parties
225 regarding the petition for judicial review. The findings of the board shall be considered
226 prima-facie evidence of the classification. The court shall hold a hearing to determine the
227 issue of classification. The court may uphold the classification of the board, or, if the court
228 finds by a preponderance of the evidence that the sexual offender is not placed in the
229 appropriate classification level, the court shall place the sexual offender in the appropriate
230 risk assessment classification. The court's determination shall be forwarded by the clerk
231 of the court to the board, the sexual offender, the Georgia Bureau of Investigation, the
232 Department of Corrections, the State Board of Pardons and Paroles, and the Department
233 of Community Supervision, and the sheriff of the county in which the sexual offender is
234 registered, and counsel for the sexual offender, if applicable.

235 (d) Any individual who was classified as a sexually violent predator prior to July 1, 2006,
236 shall be classified as a sexually dangerous predator on and after July 1, 2006.

237 (e) Upon reaching the age of 80, a registered sex offender shall be removed from the state
238 offender registry, and all other registry restrictions shall be terminated."

239 **SECTION 2-4.**

240 Said title is further amended in Code Section 42-1-19, relating to petition for release from
241 registration requirements, by adding a new subsection to read as follows:

242 "(a.1) A sexual offender classified by the board before July 1, 2023, may petition the court
243 for an order directing the board to perform a risk assessment using guidelines as provided
244 for in Code Section 42-1-12.

245 (1) When a sexual offender is assessed as a Level I risk classification on or after July 1,
246 2023, the board shall provide verification of such classification to the sheriff's department
247 of each county in which such offender resides or sleeps. Upon receipt of such

248 classification, the sheriff's department shall promptly remove such offender from the state
249 sexual offender registry.

250 (2)(A) A sexual offender assessed as a Level II risk classification on or after July 1,
251 2023, shall be placed upon the state sexual offender registry and shall maintain the
252 required registration information with the sheriff's department of each county in which
253 such offender resides or sleeps. Such offender shall not be subject to the proximity
254 restrictions as provided for under this article.

255 (B) A sexual offender assessed as a Level II risk classification on or after July 1, 2023,
256 shall register for and shall remain on the state sexual offender registry for life. Such
257 offender may submit a written request to have their case reviewed every five years.

258 (3)(A) A sexual offender assessed as a Level III risk classification on or after July 1,
259 2023, shall register annually with the sheriff's department of each county in which such
260 offender resides or sleeps. Such offender shall be subject to the proximity restrictions
261 as provided for under this article.

262 (B) A sexual offender assessed as a Level III risk classification on or after July 1, 2023,
263 shall register for and shall remain on the state sexual offender registry for life. Such
264 offender may submit a written request to have their case reviewed every ten years.

265 (4)(A) A sexual offender assessed as a Level IV risk classification on or after July 1,
266 2023, shall register biannually with the sheriff's department of each county in which
267 such offender resides or sleeps. Such offender shall be subject to the proximity
268 restrictions as provided for under this article.

269 (B) A sexual offender assessed as a Level IV classification on or after July 1, 2023,
270 shall register for and shall remain on the state sexual offender registry for life. Such
271 offender may submit a written request to have their case reviewed every 15 years.

272 (5)(A) A sexual offender assessed as sexually dangerous predator risk classification or
273 as a sexually dangerous predator on or after July 1, 2023, shall register quarterly on the
274 state sexual offender registry with the sheriff's department of each county in which such

275 offender resides or sleeps. Such offender shall be subject to all proximity restrictions
276 provided for under this article.

277 (B) A sexual offender assessed as a sexually dangerous predator or as a sexually
278 dangerous predator on or after July 1, 2023, shall register for and shall remain on the
279 state sexual offender registry for life. Such offender may submit a written request to
280 have their case reviewed every 20 years.

281 (C) A sexual offender assessed as a sexually dangerous predator shall wear an ankle
282 monitoring device for the duration of their sentence while under supervision."

283 **SECTION 2-5.**

284 Said title is further amended in Code Section 42-8-34, relating to sentencing hearings and
285 determinations, presentence investigations, payment of fees, fines, and cost, post-conviction,
286 presentence bond, continuing jurisdiction, and transferal of probation supervision, by
287 revising subsection (b) as follows:

288 "(b) Prior to the sentencing hearing, the court may refer the case to an officer of the circuit
289 in which the court is located for investigation and recommendation; provided, however,
290 that the court shall refer such case when a life sentence may be imposed because of a
291 previous conviction of a sexual felony, as is defined in Code Section 16-5-21. The court,
292 upon such reference, shall direct an officer to make an investigation and to report to the
293 court, in writing at a specified time, upon the circumstances of the offense and the criminal
294 record, social history, and present condition of the defendant, together with the officer's
295 recommendation; ~~and it,~~ and when such reference is because of a previous conviction of
296 a sexual felony, the court shall direct the Sexual Offender Risk Review Board to determine
297 the classification level of the defendant in writing and report the board's recommendation
298 to the court. It shall be the duty of such officer to carry out the directive of the court. The
299 officer's and the Sexual Offender Risk Review Board's written findings shall be provided

300 to the prosecuting attorney and defendant no later than ten days prior to the sentencing
301 hearing, or as otherwise ordered by the court."

302 **SECTION 2-6.**

303 Said title is further amended in Code Section 42-8-37, relating to effect of termination of
304 probated portion of sentence, review of cases of persons receiving probated sentence, and
305 reports, by adding a new subsection to read as follows:

306 "(e)(1) When a probationer is on probation for life for a sexual felony as defined in Code
307 Section 16-5-21, DCS shall file a petition to terminate his or her probation if, after
308 -serving ten years on probation, the probationer has:

309 (A) Paid all restitution owed;

310 (B) Not had his or her probation revoked during such period;

311 (C) Not been arrested for anything other than a nonserious traffic offense as defined
312 in Code Section 35-3-37; and

313 (D) Not been classified as a sexually dangerous predator by the Sexual Offender Risk
314 Review Board.

315 Within 30 days before issuing an order terminating the offender's probation, the court or
316 its clerk must provide written notice to the District Attorney and the State Board of
317 Pardons and Paroles regarding the court's intention to terminate such offender's term of
318 probation. The prosecuting attorney shall be given an opportunity to be heard on the
319 matter during the 30 days before the termination order is issued by the court.

320 (2) When the court is presented with such petition, it shall take whatever action it
321 determines to be for the best interest of justice and the welfare of society. When such
322 petition is unopposed, the court shall issue an order as soon as possible or otherwise set
323 the matter for a hearing within 90 days of receiving such petition. Such petition shall
324 request an updated classification from the Sexual Offender Risk Review Board. Such

325 classification shall be requested six months before the petition for removal is filed, and
326 the board shall render such reclassification within five months of the petitioner's request.

327 (3) This subsection is intended to be retroactive and applied to any probationer under the
328 supervision of DCS.

329 (4) If such petition is not granted, a petition may be filed every five years thereafter until
330 the probationer meets the requirements under paragraph (1) of this subsection."

331 **SECTION 2-7.**

332 Said title is further amended in Code Section 42-9-53, relating to preservation of documents,
333 classification of information and documents, divulgence of confidential state secrets, and
334 conduct of hearings, by revising paragraph (2) of subsection (b) as follows:

335 "(2) The department may make supervision records of the department available to
336 officials employed with the Department of Corrections and the Sexual Offender
337 Registration Risk Review Board, and to the sexual offender as provided for in Code
338 42-1-14, provided that the same shall remain confidential and not available to any other
339 person or subject to subpoena unless declassified by the commissioner of community
340 supervision."

341 **PART III**

342 **SECTION 3-1.**

343 This Act shall become effective upon its approval by the Governor or upon its becoming law
344 without such approval and the punishment provisions of this Act shall apply to all offenses
345 committed on and after July 1, 2023.

346 **SECTION 3-2.**

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