

House Bill 365

By: Representatives Holcomb of the 81st, Stephens of the 164th, Anulewicz of the 42nd, Hugley of the 141st, and Paris of the 142nd

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to
2 searches and seizures, so as to authorize the Criminal Justice Coordinating Council to create
3 and operate a state-wide sexual assault kit tracking system; to provide for definitions; to
4 provide for reporting requirements; to prohibit the sale of over-the-counter sexual assault
5 kits; to provide for civil immunity for certain sexual assault forensics personnel; to amend
6 Chapter 6A of Title 35 of the Official Code of Georgia Annotated, relating to the Criminal
7 Justice Coordinating Council, so as to provide for the creation of the Forensic Medical
8 Examination Advisory Committee; to provide for composition; to provide for the
9 establishment of rules; to provide for training protocols regarding forensic medical
10 examinations; to provide a short title; to provide for related matters; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 This Act shall be known and may be cited as the "Sexual Assault Reform Act of 2023."

H. B. 365

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SECTION 2.

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Chapter 5 of Title 17 of the Official Code of Georgia Annotated, relating to searches and seizures, is amended by adding two new Code sections to read as follows:

"17-5-75.

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

(1) 'Over-the-counter sexual assault evidence kit' means a sexual assault forensic exam kit or rape kit that:

(A) Is marketed or presented as over-the-counter, at-home, or self-collected;

(B) Is offered for sale or as a sample to members of the public; and

(C) Purports to allow an individual to independently collect evidence of a sexual assault outside of a collecting facility.

(2) '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 out-of-state 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

41 Bureau of Investigation, and other entities having custody of sexual assault kits to update
42 and track the status and location of sexual assault kits;

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

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

46 (d) The Criminal Justice Coordinating Council may use a phased implementation process
47 in order to launch the sexual assault kit tracking system and facilitate entry and use of the
48 system for required participants. The council may phase initial participation according to
49 region, volume, or other appropriate classifications. All law enforcement agencies and
50 other entities having custody of sexual assault kits shall register for and utilize the system
51 in order to fully participate no later than one year following the effective date of this Code
52 section. The council shall submit a report on the current status and plan for launching the
53 system, including the plan for phased implementation, to the appropriate committees of the
54 legislature and the Governor no later than January 1, 2024.

55 (e) The Criminal Justice Coordinating Council shall submit a report on the state-wide
56 sexual assault kit tracking system to the appropriate committees of the legislature and the
57 Governor. The council shall publish the current report on its website. The first report shall
58 be submitted on or before December 31, 2022, and subsequent reports are to be submitted
59 on or before January 31 of each subsequent year to provide data for the preceding calendar
60 year. Each report shall include the following:

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

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

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

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

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

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

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

77 (f) For the purpose of reports submitted under subsection (e) of this Code section, a sexual
78 assault kit shall be assigned to the jurisdiction associated with the law enforcement agency
79 anticipated to receive the sexual assault kit or otherwise having custody of the sexual
80 assault kit.

81 (g) An over-the-counter sexual assault evidence kit does not include a sexual assault kit
82 sold or provided to law enforcement or medical personnel or a collecting facility. A person
83 may not sell, offer for sale, or provide to an individual an over-the-counter sexual assault
84 evidence kit. A violation of this subsection is a misdemeanor punishable by fine not to
85 exceed \$1,000.00.

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

91 (i) The Criminal Justice Coordinating Council shall adopt rules as necessary to implement
92 this Code section.

93 17-5-76.

94 In cases wherein a forensic medical examination occurs as defined in Code Section
95 17-5-70, the testing of the evidence from such examination shall only be used to identify
96 an alleged perpetrator's alleged involvement in a crime of sexual assault."

97 **SECTION 3.**

98 Chapter 6A of Title 35 of the Official Code of Georgia Annotated, relating to the Criminal
99 Justice Coordinating Council, is amended by adding a new Code section to read as follows:
100 "35-6A-16.

101 (a) There is created the Forensic Medical Examination Advisory Committee which shall
102 be composed of 13 members.

103 (b) The members of the committee shall be the State Sexual Assault Nurse Examiner
104 (SANE) Coordinator and 12 other citizens of this state appointed by the Governor. Of the
105 members appointed by the Governor, four shall be registered nurses who hold board
106 certification in forensic nursing, one shall be a representative from the Georgia Board of
107 Nursing, one shall be a representative from the Georgia Nurses Association, two shall be
108 licensed providers under Georgia law who are advanced practitioners, one shall be a peace
109 officer certified by the Georgia Peace Officer Standards and Training Council, one shall
110 be a prosecuting attorney, one shall be employed by the Division of Forensic Sciences of
111 the Georgia Bureau of Investigation, and one shall be a victims' rights advocate. The
112 Governor shall make the initial appointments not later than July 1, 2023, and shall appoint
113 three members for a one-year term of office, three members for two-year terms of office,
114 three members for three-year terms of office, and three members for four-year terms of
115 office, which shall be specified in each member's appointment. Thereafter, successors shall
116 be appointed to four-year terms of office. Vacancies shall be filled by appointment of the
117 Governor for the unexpired term. Initial terms of office shall begin on July 1, 2023.

118 (c) The committee shall establish by rule and regulation criteria for the SANE didactic and
119 clinical training protocols for the forensic medical examination and maintain certificates
120 for forensic nurses in the state. The training protocols shall be consistent with best practice
121 as defined by the national organizations and uphold nurse practice standards as regulated
122 by the Georgia Board of Nursing. To receive the state certificate, the registered nurse must
123 complete a Criminal Justice Coordinating Council approved SANE didactic and clinical
124 training and submit the required documents required by the protocol as set forth by the
125 committee. Forensic Nurses with sexual assault nurse training who begin practice in this
126 state on or after August 1, 2023, shall have until January 1, 2024, to apply for the state
127 certificate. Nurses entering the state on or after August 1, 2023, and who intend to practice
128 as a sexual assault nurse examiner shall apply for the state certificate prior to beginning
129 practice as a sexual assault nurse examiner. The Victims Compensation Division of the
130 Criminal Justice Coordinating Council shall have the authority to make exceptions for any
131 reimbursement for the SANE examination by rule or regulation.

132 (d) On and after July 1, 2023, persons or organizations that provide sexual assault nurse
133 examiner training in this state shall register and receive approval from the State Sexual
134 Assault Nurse Examiner Coordinator prior to offering such training. Such persons or
135 organizations shall submit the locations and dates of the proposed training and the training
136 content for all adult/adolescent and pediatric didactic and clinical training for approval by
137 the State Sexual Assault Nurse Examiner Coordinator. Such persons or organizations shall
138 report to the Criminal Justice Coordinating Council on completed training with such
139 information and in such manner as directed by the Criminal Justice Coordinating Council.

140 (e) Approvals for trainings made by the State Sexual Assault Nurse Examiner Coordinator
141 and the Criminal Justice Coordinating Council shall adhere to the established rules as set
142 forth by the committee protocol. The committee shall also act as an advisory committee
143 to assist the Criminal Justice Coordinating Council in developing best practice
144 recommendations for forensic medical examiners in this state."

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SECTION 4.

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