

# **Mountain Judicial Circuit Protocol for Responding To Victims of Sexual Assault**

Revised May 2019

Recommended Guidelines for  
Victim Support Services  
Law Enforcement  
Sexual Assault Examination and Evidence Collection Prosecution

**Table of Contents**  
(Mountain Judicial Circuit)

Chapter 1	Introduction.....	2
Chapter 2	Victim Support Services .....	7
Chapter 3	Law Enforcement Response.....	10
Chapter 4	Medical: Sexual Assault Examination and Evidence Collection .....	18
Chapter 5	Prosecution.....	20
Appendix I	Checklist: Victim Services.....	25
	Checklist: Law Enforcement .....	28
	Checklist: Prosecution.....	31
Appendix II	Sexual Assault Examination and Evidence Collection, Sample forms.....	33
Appendix III	Laws Cited In Sexual Assault Protocol. ....	44

## Chapter 1

### Introduction

#### I. Purpose of the Protocol

This document is an updated protocol from 2007 and was compiled at the behest of B. Chan Caudell, Chief Judge Superior Courts, Mountain Judicial Circuit in response to Senate Bill 457, signed into law in July 2004, and House Bill 1297, signed into law in 2008.

In 2008, House Bill 1297 amended Chapter 24 of Title 15 and Title 17 of the Official Code of Georgia Annotated, relating to sexual assault protocol and criminal procedure, respectively, so as to afford greater protection to victims of sexual crimes; to change provisions relating to sexual assault protocol; to provide that failure to follow the sexual assault protocol shall not preclude the admissibility of evidence; to provide for preservation of evidence; to allow victims of certain sexual offenses to have the right to free forensic medical examination even if the victim refuses to otherwise cooperate with law enforcement; to allow victims of certain sexual offenses to refuse requests for polygraph examinations or other truth-telling devices; to allow the Criminal Justice Coordinating Council to waive subrogation under certain circumstances; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

This Document was revised in May 2014, May 2017 and now in 2019.

The purpose of the protocol shall be to ensure coordination and cooperation between all agencies involved in sexual assault cases so as to increase the efficiency of all agencies handling such cases and to minimize the stress created for the sexual assault victim by the legal and investigatory process; provided, however, that a failure by an agency to follow the protocol shall not constitute an affirmative or other defense to prosecution of a sexual assault, preclude the admissibility of evidence, nor shall a failure by an agency to follow the protocol give rise to a civil cause of action.

**O.C.G.A. § 15-24-2 (as amended)** directs each judicial circuit under the auspices of the Chief Superior Court Judge in Georgia to establish a sexual assault protocol to:

- Facilitate the provision of consistent, comprehensive, sensitive and non-judgmental treatment of victims of sexual assault as they progress through victim services, health and criminal justice systems
- Standardize the collection of evidence
- Develop a coordinated effort among allied professionals to ensure that victims receive efficient and comprehensive medical care, evidentiary examination, emotional support and referral information

The protocol should be used by health care providers, including hospitals, all branches of law enforcement, including prosecution, and programs which assist victims. An emphasis in this protocol is upon letting a victim regain control over decisions by letting that victim choose which services are needed.

## **II. Organization of the Protocol**

The protocol is organized into six sections: (1) Introduction; (2) Victim Support Services; (3) Law Enforcement Response; (4) Sexual Assault Examination and Evidence Collection; (5) Prosecution; (6) the Appendices. A check list summarizing procedures for the victim support services, law enforcement response, and prosecution sections can be found in the Appendices.

## **III. Persons Covered**

Victims of adult sexual assault are female and male, age 18 and older. Victims of sexual assault may be sexually assaulted by strangers, acquaintances, family members, friends, intimate partners, or spouses.

"Sexual assault" means rape, sodomy, aggravated sodomy, statutory rape, child molestation, aggravated child molestation, sexual assault against a person in custody, sexual assault against a person detained in a hospital or other institution, sexual assault by a practitioner of psychotherapy against a patient, incest, bestiality, sexual battery, and aggravated sexual battery as those terms and offenses are set forth and defined in Chapter 6 of Title 16; as defined in O.C.G.A. 17-5-70 (as amended).

In Georgia, there is no one law applicable to the crime of sexual assault. Rather, there are a number of laws that refer to rape, sodomy and aggravated sodomy, statutory rape, sexual battery and aggravated sexual battery, and child molestation and aggravated child molestation. See Appendix for definitions and comparisons of sexual offense statutes.

This protocol covers adult victims of sexual assault. These are defined as being 18 years old or older.

## **IV. Sensitivity to the Needs of the Victim**

Ensuring that sexual assault victims will be treated with sensitivity and compassion requires that victim services, law enforcement, medical, and prosecutorial personnel be made aware of the special needs of these victims. Since there is no "typical response" to the trauma of sexual assault, it is important to understand the many and varied ways victims may react to this particular crime and the issues surrounding sexual assault that may influence their reactions.

Victims of sexual assault, like victims of other crimes, not only must cope with the physical trauma perpetrated against them, they also must deal with the emotional and psychological repercussions of the assault. However, because sexual assault, unlike other crimes, is such a complete and violent violation of the most intimate parts of a person's self, the emotional and psychological repercussions of a sexual assault can be devastating.

While victims of sexual assault may feel guilty, frightened, ashamed, dirty, angry, anxious, embarrassed or any number of other emotions, it is important to remember that there is no "typical" way for victims to feel, react, or look after a sexual assault. Some sexual assault victims may appear to be calm while others may look visibly upset or enraged. Agency

personnel must unlearn any presumptions they may harbor about how they believe a "true" victim of sexual assault will look or act and learn to accept and support all sexual assault victims. This includes learning to accept and support sexual assault victims of every age, race, gender, or sexual orientation.

Anyone responding to a victim of sexual assault should make the same inquiries of all victims, and offer the same level of support without discrimination or bias.

Victim confidentiality should be strictly protected. Professional staff should make direct inquiries of the victim regarding how to address the disclosure of confidential information. Assumptions should not be made concerning whether it is safe to disclose information to family, friends, employer, or news media about the assault or the victim's sexual preference. Any documentation should be undertaken with sensitivity to the potential for long-term negative impact on a victim.

## **V. Prosecution of Cases**

While recognizing the importance of the victim's cooperation to the successful prosecution of an alleged perpetrator, the Georgia Sexual Assault Task Force expects that prosecutors will consider each case carefully before deciding whether or not to prosecute the case. Sexual offenses are very serious crimes and every effort should be made to bring the alleged perpetrator to justice, with or without victim cooperation.

## **VI. Reporting requirements**

There are two laws which relate to the reporting of sexual assault and/or sexual abuse O.C.G.A. 31-7-9 (as amended) and 19-7-5 (as amended) and two other laws designed to protect elderly persons who may be victims O.C.G.A. 30-5-4 (as amended) and 31-8-80 (as amended).

### **A. Reporting of Sexual Assault and/or Sexual Abuse**

**O.C.G.A. § 31-7-9 (as amended)** Reports by physicians and other personnel of non accidental injuries to patients; immunity from liability

**O.C.G.A. § 19-7-5 (as amended)** mandates the reporting of child abuse. A "child" is any person under age 18. Under this law, child abuse includes sexual abuse. O.C.G.A. 19-7-5 (as amended) is located in the appendices section.

### **B. Protection of Elderly Persons**

**O.C.G.A. § 30-5-4 (as amended)** Reporting of need for protective services; manner and contents of report; immunity from civil or criminal liability; privileged communications

**O.C.G.A. § 31-8-80 (as amended)** Long-term Care Facility Resident Abuse Reporting Act

### **Need for Consent of Victim for Medical Procedures**

**O.C.G.A. § 31-9-2 (as amended) O.C.G.A. § 31-9-7 (as amended) and O.C.G.A. § 31-17-7 (as amended)** are laws that pertain to medical consent for medical procedures.

## **VII. Criminal Law Update**

- Definitions as used in the Chapter **O.C.G.A. § 15-24-1 (as amended)**

(1) "Protocol committee" or "committee" means a multidisciplinary, multiagency sexual assault committee established for a county pursuant to **Code Section 15-24-2**. The protocol committee is charged with developing local protocols to investigate and prosecute alleged cases of sexual assault.

(2) "Sexual assault" means rape, sodomy, aggravated sodomy, incest, sexual battery, and aggravated sexual battery as those terms are defined in **Chapter 6 of Title 16**.

- Sexual assault protocol; committee **O.C.G.A. § 15-24-2 (a) (as amended)**  
Each judicial circuit shall be required to establish a sexual assault protocol as provided in this Code section.

- Definitions as used in this **Chapter O.C.G.A. § 17-5-70 (as amended)**

(1) "Forensic medical examination" means an examination by a health care provider of a person who is a victim of a sexual assault. Such examination shall include a physical examination, documentation of biological and physical findings, and collection of physical evidence from the victim.

(2) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the alleged sexual assault.

(3) "Sexual assault" means rape, sodomy, aggravated sodomy, statutory rape, child molestation, aggravated child molestation, sexual assault against a person in custody, sexual assault against a person detained in a hospital or other institution, sexual assault by a practitioner of psychotherapy against a patient, incest, bestiality, sexual battery, and aggravated sexual battery as those terms and offenses are set forth and defined in **Chapter 6 of Title 16**.

- Preservation of physical evidence: **O.C.G.A. § 17-5-71; 17-5-55 or 17-5-56 (all laws as amended)**
- Forensic medical examinations: **O.C.G.A. § 17-5-72 (as amended)**
- Polygraph examinations or other truth-telling devices; refusal to submit; **O.C.G.A. § 17-5-73 (as amended)**
- Consent of minors for treatment of venereal disease; validity of consent; information to other persons: **O.C.G.A. § 31-17-7(a) (as amended)**

- HIV testing: **O.C.G.A. § 17-10-15 (as amended)**
- Medical examination costs: **O.C.G.A. § 17-15-15 (as amended)**

VIII. Crime Victims' Bill of Rights **O.C.G.A. § 17-17-1 *et sec.* (as amended)** and  
Victim Compensation **O.C.G.A. § 17-15-1 *et sec.* (as amended)**

What is Crime Victims Compensation?

Crime Victims Compensation assists eligible victims of violent crime **with** expenses that are incurred due to the victimization.

- Victim Compensation: **O.C.G.A. § 17-15-2 (as amended)** (Definitions as used in this Chapter.)

## Chapter 2

### Victim Support Services

Services to victims can be provided by sexual assault centers, victim assistance programs or agencies, crisis centers, or other agencies. These agencies can be non-profit or governmental. A community may have one or more of these agencies providing services to victims.

**(1) Sexual Assault Centers** may provide a 24-hour crisis hotline, crisis intervention and support, counseling or referral to counseling services, information and referral, accompaniment to the hospital and/or sexual assault center, support groups, advocacy for victims including support throughout the criminal prosecution, and assistance with applying for financial compensation through the Georgia Crime Victim's Compensation Program (as victim qualifications apply). Many of these programs provide training to allied professionals including, but not limited to public health, medical, law enforcement, legal and mental health on the impact of trauma, physical and emotional reactions and the range of needs of sexual assault victims. These services are provided to all victims of sexual violence without regard to when the crime occurred or if the victim plans to pursue the case legally. Sexual assault centers also may be involved in prevention education and public awareness activities in the community.

**(2) Victim Assistance Programs** may be located in the offices of prosecuting attorneys or law enforcement agencies. These programs provide information, support, and guidance for the victim throughout the criminal justice process including information regarding the status of the court case; information and explanation regarding criminal proceedings; a companion to attend court with the victim; emotional support; and referrals to counselors and other agencies. Assistance is also provided to a victim applying for financial compensation through the Georgia Crime Victim's Compensation Program.

**(3) A Crisis Center or other agencies** that have a 24-hour crisis hotline and are primarily crisis intervention services that also provides information and referrals.

Victim service agencies are involved at various points in sexual assault cases. Ideally these agencies should begin assisting victims at the time the assault is reported. Victim service agencies should work with all relevant agencies to form a continuum of care for victims. Unlike other agencies (i.e. law enforcement, medical, or prosecutor's offices) which serve victims at certain specific junctures in the case, many victim service agencies help victims from "start to finish." The following section includes a discussion of issues relating to victim service agencies and their involvement and coordination with other agencies which respond to sexual assault victims.

#### I. Initial Report of Sexual Assault

If an adult victim of sexual assault decides to report an assault, the victim should be allowed to decide whom to tell. Options include family members, guardians or caretakers, staff of law enforcement, a hospital or other medical facility, or an emergency crisis line operated by a sexual assault center or other crisis agency.



Victim service agencies, at the outset, often play dual roles of providing crisis intervention and acting as liaison with other agencies.

Victim service agencies should be involved at the earliest possible time after a report of sexual assault, no matter which agency receives the initial report.

## **II. Initial Response**

Whoever is contacted first by the victim should be concerned for the safety and well-being of the victim.

- With the consent of the victim, help identify and address the immediate concerns of the victim, e.g., is he/she in a safe place, are there family members or friends whom the victim wishes contacted, are medical care or transportation to the hospital needed, is clothing needed to wear home from the hospital
- Contact Sexual assault center
- Provide information to victims regarding the effects of destroying evidence, taking a bath, washing clothes
- Provide emotional support and crisis intervention to victim and his/he families
- Be present during medical exam and police questioning when appropriate
- Help arrange transportation to and from the hospital or medical facility or collaborate with law enforcement for transportation, if the crime is reported

For their own safety, and to avoid interfering with the investigation, victim advocates do **not** go to the crime scene unless requested by law enforcement. Victim advocates are not investigators or attorneys and do not investigate cases or give legal advice. The role of the victim advocate should be explained to the victim, and the advocate should make sure the victim is comfortable with the advocate continuing to provide services.

## **III. Coordination of Services**

Although several different agencies come in contact with victims at various stages after the assault is reported, victim service agencies are often considered the "hub of the wheel" for victims, providing consistent support and advocacy throughout the process.

Victim service agencies need to achieve an effective balance between advocating for victims and working within the parameters of the criminal justice system. Toward that end, victim service agencies may offer some or all of the following services (but are not limited to):

- Maintaining frequent communication with victims regarding the status of the criminal investigation and court proceedings

- Advising victims of procedures for payment of forensic portion of medical examination by the Georgia Crime Victims Emergency Fund as provided in **O.C.G.A. § 17-15-15 (as amended)**.
- Helping victims complete compensation applications for non-reimbursed expenses resulting from the crime (such as medical, counseling, prescriptions, lost wages); or confirming application process has been initiated by another agency
- Notifying victims of all available services such as support groups, crisis intervention and advocacy, counseling, education
- Explaining the Victims' Bill of Rights, **O.C.G.A. § 17-17-1 et sec (as amended)**, and how to request the various notifications (e.g., notices of bond hearing, release of defendant from incarceration, case status), and how to provide input during the case proceedings
- Helping prevent additional trauma or injury to the victim
- Encouraging and supporting victims to become active participants in their own case
- Offering support and assistance to the families of victims
- Protecting and ensuring the victim's privacy
- Deal with any problems encountered during the aftermath of the crime

Victim service agencies need the cooperation of many other agencies to provide information and support; thus, networking and maintaining effective lines of communication with law enforcement, medical, prosecutorial, criminal justice and other social service agencies are essential for victim service agencies to be an actual "hub of the wheel" for victims.

#### **IV. HIV Testing**

Testing the Victim: When working with a victim who expresses concern about possible exposure to HIV during the assault, victim service agencies should refer the victim to the appropriate physician's office and/or medical facility or health department for his/her testing.

##### **Testing the Offender:**

##### **O.C.G.A. § 17-10-15 (as amended)**

AIDS transmitting crimes; requiring defendant to submit to HIV test; report of results

#### **V. STI Testing**

Testing the Victim: When working with a victim who expresses concern about possible exposure to a STI during the assault, victim service agencies should refer the victim to the appropriate physician's office and/or medical facility or health department for his/her testing.

## Chapter 3

### Law Enforcement Response

#### I. Responding to Victims: the Role of Law Enforcement

Many sexual assault victims are severely traumatized as a result of their attack. This trauma, coupled with the intensely personal nature of the crime, often leaves victims reluctant, embarrassed or afraid to report the assault to the police. An understandable apprehension about police and court procedures may further increase victim reluctance to report the crime and cooperate with law enforcement.

Police officers and detectives play a crucial role in overcoming the psychological hurdles which confront a victim and then obtaining the victim's cooperation in the assault investigation. Since a victim's ability to cope with the crime and its aftermath may prove critical to the ultimate success of criminal prosecution, it is imperative that law enforcement agencies always treat the victim of sexual assault with the utmost compassion while skillfully guiding the victim's potentially uncomfortable journey through the criminal justice system.

Investigators must always remain sensitive to the individuality of each victim and the massive impact a sexual assault may have upon the victim and the victim's family and friends. An investigator should take into account not only the particular assault suffered by each victim, but the victim's age, physical abilities, culture, socio-economic status, and sexual orientation.

This section was developed to maximize the probability across the state of Georgia, of providing consistently appropriate and sensitive treatment to victims and of successfully prosecuting the perpetrators of sexual assault. This is a model protocol, designed to be adapted by local communities. The protocol in no way diminishes the discretion of law enforcement in handling cases of sexual assault.

#### II. Complaint Reporting Procedures

The first report of a sexual assault is usually made by the victim to a dispatch or communications center of a law enforcement agency. Dispatch or communications staffers are critical in aiding the victim to regain control and composure after an assault. The staffers should remain calm, understanding and non-judgmental while speaking with any victim.

##### A. If the victim is the caller, then the dispatcher should:

- Obtain the victim's name and location immediately
- Determine if the victim is currently safe and whether or not the victim needs immediate medical attention
- Dispatch the appropriate law enforcement units and, if necessary, emergency medical help
- If possible contact the medical facility and have them notify the Sexual Assault Nurse Examiner (SANE) that a victim is being transported for medical attention, unless the situation is life threatening, or if other medical treatment is immediately necessary

- If medical attention is not being sought by the victim, the initial contact with the local sexual assault center will be the responsibility of the investigating officer
- Maintain an open line with the victim in order to assure the victim that help is coming, to instruct the victim not to wash, change clothes or disturb any potential evidence, and to determine where and when the attack occurred, the name or description of the assailant, the means used by the assailant to leave the scene, and the direction of flight
- If it is immediately apparent to the dispatcher that the victim is unable to discuss the assault, then the dispatcher should simply seek to keep the victim calm until help arrives.

#### **B. If the victim is not the caller**

The initial complaint may be received after the assault from a person the victim has contacted, such as a family member, friend, neighbor or concerned citizen. The dispatcher should, through the caller, gather the same information previously described to assist the victim, while enlisting the help of the caller to keep the victim calm until additional help arrives.

#### **C. Emergency Communications**

A record of calls, radio traffic and other communications pertaining to a sexual assault case may be preserved by the law enforcement agency receiving the complaint. The dispatcher may assist investigating detectives by making a copy of the calls, radio traffic and other communications immediately after the assault.

### **III. The Responding Law Enforcement Officer**

The first law enforcement officer to reach a sexual assault victim is usually a uniformed, or "street," police officer. This officer, as with others who investigate the case, should quickly develop a good rapport with the victim while initiating the gathering of evidence.

#### **A. Immediate Response**

1. The responding officer should first address the victim's physical and medical needs. Emergency first aid should be offered, if necessary, while awaiting an emergency medical response unit.
2. The responding officer must also address the emotional needs of the victim by remaining calm, sympathetic and understanding. The needs of the victim must always precede the demands of the investigation.
  - To increase the victim's emotional comfort and security prior to a transfer to a medical facility, the officer should explain to the victim the actions anticipated on the victim's behalf, including a physical examination.
  - The officer will inform the victim of the usual medical provider(s) in the particular county. However, the victim may have another preference for medical care and that should be considered.

- A friend or family member of the victim may be requested to bring a change of clothing to the medical facility for the victim's use after the medical examination. However, in some medical facilities the local sexual assault center will have provided the necessary clothing.
3. The officer should arrange for the transportation of the victim to the appropriate medical facility. Where possible, a non-uniformed officer should transport the victim to the medical facility in an unmarked vehicle.
    - The officer should also ask the victim to refrain from washing, showering, brushing teeth, using a mouthwash, smoking, eating, drinking, douching, urinating or defecating to prevent the loss of valuable physical evidence. The evidentiary importance of preserving personal clothing and articles from the crime scene should also be explained.

*Even if a victim has already bathed or douched, the officer should nevertheless proceed to transport the victim to the appropriate medical facility.*

4. The responding officer, if time permits, may also ask the victim some questions about the sexual assault. Questioning should be conducted by a single officer, in the greatest privacy available, and questioning should be limited in scope to crucial information immediately needed by law enforcement:
  - Name or physical description of assailant
  - Unusual physical characteristics of assailant
  - Clothing of assailant
  - Method of flight (car, truck, on foot, etc.)
  - Direction of flight
5. If the crime scene is known, then the forensic, or identification unit of the law enforcement agency, should be notified as soon as possible that it will be needed at the crime scene and at the medical facility selected for the physical examination.
6. If the responding officer proceeds to the medical facility where the victim is taken, the officer should:
  - Remain at the medical facility until police detectives or investigators have arrived
  - Thoroughly brief the detectives on any information about the victim, the assault, the assailant, and the crime scene which the officer has obtained. These briefings should take place in a private setting where confidential information cannot be overheard by other patients or hospital personnel

## B. Delayed Reporting

If more than 72 hours have elapsed since the incident of sexual assault, and the victim contacts law enforcement, there is a possibility that some forensic evidence may remain up to five days in the victim's body or there may be evidence of tearing or other internal abrasions. For this

reason, the victim may be encouraged to seek medical care and to complete the medical evidence collection.

### **C. The Crime Scene**

1. No one, including the responding officer, should touch physical articles, including weapons, blood or any other potential item of evidence at the scene.
2. The victim's clothing and personal effects should be protected from all handling and contamination until forensic officers reach the crime scene.
3. The responding officer, with the assistance of other officers, should guard the scene from any intrusion until the arrival of forensic officers.
4. A crime scene access log should be maintained by crime scene officers listing the full name of every person, police and civilian, who comes to the scene.
5. When the forensic officers arrive at the crime scene, the responding officer should give the forensic officers all information available on the investigation and then, if requested, assist the forensic officers at the scene.

### **D. The Incident Report**

It is imperative that the responding officer provide an accurate and complete report detailing the officer's activity. The report should include:

1. The date and time of dispatch and arrival at the scene, the nature of the dispatch, the location, and a description of the scene.
2. The identity of the victim (or a description if identity is unknown), the victim's personal information including phone numbers and addresses for home and work, and the names, phone numbers and addresses of other persons who know the victim and who could be contacted if the victim could not be contacted.
3. A description of any injuries to the victim, of the clothing of the victim, and any damage to the victim's clothing or personal possessions.
4. A careful description of the victim's emotional state.
5. Actions taken on behalf of the victim.
6. Actions taken to preserve the crime scene.
7. Information learned about the sexual assault, including:
  - a) The exact location of the assault

- b) The approximate time of the assault
- c) Whether a weapon was used, and if so, what kind
- d) How the victim and the assailant came to the scene
- e) A description of the sexual assault
- f) The identity, if known, and complete description, including a clothing description and any other information obtained about the assailant from the victim or witnesses
- g) The means by which the assailant left the scene
- h) The assailant's direction of flight
- i) Any other information obtained from the victim
- j) The names, addresses and phone numbers of any witnesses identified by the victim or located by the police
- k) The statements of any witnesses interviewed at the scene
- l) The names of any law enforcement officers; including supervisors, detectives and forensic officers who came to the crime scene (access log) or medical facility
- m) Any other actions taken in the case
- n) The exact time the officer left the crime scene and, if applicable, the medical facility

#### **IV. The Medical Examination and Law Enforcement**

Law enforcement officers should not be present during the medical examination of the sexual assault victim. The sexual assault center provides trained advocates to support victims during the examination. Georgia Code section 35-1-2 does govern the collection and processing of evidence collected in the medical examination. This code section can be found in the appendix.

#### **V. The Investigator's Role in Sexual Assault Cases**

The chief investigator in a sexual assault case has the critical role in the successful prosecution of the case. The importance of obtaining an eventual criminal conviction, however, must be balanced against the necessity of protecting the victim's physical and emotional health.

##### **A. The Investigators Response**

An investigator will usually be summoned to the medical facility where the victim has been taken.

1. The investigator should respond immediately to the facility.
2. The investigator should obtain a thorough briefing from the responding officer(s). This briefing, as in all discussions of the case, should be conducted quietly and discretely.
3. Each officer who responded to the crime scene, had contact with the victim, or who came to the medical facility should be directed to file a detailed, written report on the case.
4. The investigator should conduct a thorough interview with the victim and should either write up the interview or audio tape it. During the initial contact, the investigator should:
  - Clearly identify himself/herself to the victim

- Verify the information obtained by the dispatcher and/or responding officer which may help the police locate the suspect
  - Make certain that the victim understands what is being done on the victim's behalf
  - Carefully note the emotional status and physical injuries of the victim for later inclusion in the case report
  - Inform the victim that a more detailed, thorough interview will be conducted at a later time
5. The investigator should confirm that:
    - Action is being taken by other officers to locate and detain the suspect
    - The crime scene, if known, is being protected and thoroughly processed by the forensics unit
    - Known witnesses are being interviewed
    - Chain of custody is maintained and photographs obtained or arranged for if needed
    - The emergency phone calls and records of police traffic in reference to the case are preserved by the communications department for later use
    - All evidence available at the medical facility, including the clothing of the victim, is held
  6. The investigator should consult with the victim advocate/counselor and any family members or friends of the victim to explain the actions being taken by the police and to seek their cooperation and assistance in future contacts with the victim.
  7. The investigator should arrange transportation home or to a safe location selected by the victim.
  8. If appropriate, the investigator should assure that information about the suspect has been sent to other law enforcement agencies.
  9. The investigator should verify that all the evidence obtained at the medical facility is correctly inventoried and prepared for transfer to the crime lab.

## **B. The Follow-up Interview**

### **1. . Preparation for the Interview**

After a sexual assault has occurred, an in-depth interview with the victim should be conducted within 24 hours, though it may take place within a week. The victim's physical and emotional health must remain paramount, and the interview should be held when the victim is no longer in crisis.

- a) The interview should be held in a comfortable, private setting. A location should be selected which permits both visual and sound privacy, free of unnecessary interruptions.
- b) Accommodation should be made if the victim requests the presence of a victim advocate, relative or friend or needs an interpreter.
- c) The interview should be audio or video recorded in order to:



- Document the details of the interview
- Preserve the interview to permit other authorized persons to hear the victim's account without requiring additional interviews
- Permit the presence of other persons, such as victim advocates, to be present at the interview

## 2. The Interview

- a) The investigator should be professional, compassionate, understanding and non-judgmental during the interview. The necessarily intimate communications with the victim demand tactful and sensitive questioning.
- b) The investigator must remain aware at all times that the victim may have suffered psychological trauma far worse than any physical injury. Many victims experience a shock and anxiety which persists for hours, days, and even months after being attacked. Insensitivity to the victim can cause additional psychological harm to the victim and severely damage the investigation by diminishing the victim's willingness to cooperate with law enforcement. Conversely, a sensitive, caring investigator can bolster the victim's confidence and self-esteem and increase the victim's desire to assist with the investigation.
- c) The investigator's role in connection with the investigation should be clearly explained to the victim. The victim should be informed why certain very intimate, perhaps embarrassing, questions must be asked, particularly about the assault itself. The victim should be assured that the investigator understands the difficulty of the interview and is more than willing to conduct the interview at a pace comfortable for the victim.
- d) The investigator should use language that is readily understood by the victim. To the extent possible, the investigator should use the same terms, including slang, as the victim in order to build rapport with the victim and increase valuable communication. If slang terms are used, the interviewer should use the terms unhesitatingly and without embarrassment.

Certain questions and inquiries are never appropriate. For example, victims should not be asked "did you enjoy it?" or "did you have an orgasm?".

- e) The investigator should let the victim narrate what happened, in the victim's own words. Then follow-up questions can be asked **with the investigator explaining to the victim why those questions need to be asked**. The interview should be as thorough as possible. Inquiry areas should include:
  - The victim's prior relationship (if any) with the assailant
  - Prior sexual history with the assailant, if any
  - The details of the forced sexual act(s)
  - The assailant's modus operandi
  - The assailant's clothing
  - The assailant's appearance including marks, scars, tattoos, deformities, or unusual physical features or body odors
  - The assailant's mean& of restraining the victim

- The victim's response to the attack, including any verbal or physical resistance
- The victim's state of mind during the attack
- The use of threat of weapons
- What the assailant said to the victim, including threats and instructions
- The names and descriptions of any other witnesses, participants or accomplices

### **3. Post-interview Follow Up**

- a) The investigator should provide the victim with information about the Victims' Bill of Rights and should encourage the victim to seek support from family, friends, and victim advocacy groups.
- b) After the interview has been concluded, the detective should obtain any additional physical evidence, such as photos, needed from the victim. The possible need of additional steps in the investigation, including composite drawings, photographic or live line-ups, should be explained.

### **4. Victim Follow-up**

During the investigation of the sexual assault, and after the arrest of an assailant, the chief investigator or detective has a continuing responsibility to interact with the victim by:

1. Informing the victim when an assailant has been arrested.
2. Informing the victim of future investigative and prosecutorial activities on the case, including those which might require the victim's involvement.
3. Maintaining contact with the victim to ensure that appropriate support services are available.
4. Working with prosecutors and victim advocacy agencies to develop the case and familiarize the victim with court practices and procedures.

### **D. The Case Report**

The chief investigating officer in a sexual assault case has the crucial responsibility of compiling all the information learned throughout the investigation. This compilation, the case report, will be the main source of information for the prosecutors handling the case. Therefore, it is imperative that every effort is made to be as thorough, accurate and informative as possible in building the report.

## **Chapter 4**

### **Sexual Assault Examination and Evidence Collection**

#### **I. Adults**

A Sexual Assault Examination and Evidence Collection form, which follows this narrative, is intended to be used as a guide for examining and treating adult victims of sexual assault and for collecting evidence related to a sexual assault. It may be used in place of, or in addition to, an existing medical protocol. It is designed to be used in a variety of settings, for example, in a hospital emergency room a physician's office, or a sexual assault center that is able to conduct a medical examination and collect the forensic evidence. Forms may be adjusted to meet the individual needs of the facility performing the examination and evidence collection. (Sample form in appendix)

#### **II. Special Populations of Victims**

Beyond the normally sensitive care provided to any victim of sexual assault, special care should be observed (and special training may be required) when the victim falls into one or more of the following categories: elderly adults, physically or mentally disabled adults, male adults, those assaulted by an intimate partner, and those who present for examination more than 72 hours after the assault.

Collection of physical evidence more than 72 hours after a sexual assault must be guided by the particulars of individual case histories. Although there is a possibility that some forensic evidence may remain up to 5 days in the victim's body, the potential to identify spermatozoa is considerably diminished or even negated with this extensive time period. For instance, using current technology, it would not be possible to do a DNA profile of any remaining semen. The better evidence in this situation would be an undergarment or other clothing worn immediately following the assault. These items may also be needed in cases where sperm samples from swabbs are not sufficient in quantity for DNA analysis. The case officer should be contacted to ascertain and coordinate the need for collecting patient's clothing in such cases.

#### **III. The Medical Examination**

Counseling or crisis intervention and advocacy are provided by those trained and able to give it, such as a sexual assault center staff and volunteers or other professionals available at the medical facility. Emotional support is provided by any person coming into contact with the patient.

The patient is triaged and screened medically, and registered in the health care facility. The patient is informed that in Georgia the health care facility is required to notify law enforcement of all non-accidental injuries. However, it is the survivor's decision whether to report the crime and cooperate with an investigation. Patients may be asked to sign an initial set of consents. The consent of patients is not only required by law, it is also one way to recognize and help them regain their sense of dignity as persons and to aid their transition from the status of victim to that

of survivor. If necessary, emergency medical care is provided. Counseling and emotional support are always provided.

The health care professional informs the patient about the nature, duration, and sequencing of the medical examination and the collection of forensic evidence.

In order to preserve the patient's dignity and confidentiality, it is important to discuss these matters in a private office or secluded space with a counselor or other person present to support the patient. After informing the patient concerning what is to follow, additional consents are obtained, a secondary assessment is performed, and the history of the patient and the assault are taken. Note that while it is important to document the history of the patient and the assault as completely as possible, the examiner should not inquire about or document irrelevant aspects of the patient's sexual history.

Special care should be taken to advise the patient of the implication of the HIV testing. In order to maintain anonymity, the patient may be asked to consider obtaining these tests through the public health department and/or a medical facility. Provide information to victims on how to protect consensual sex partners against the possibility of HIV transmission.

Any forensic evidence collected within hours of an assault should be documented in the Georgia Bureau of Investigation/Division of Forensic Sciences Sexual Assault Evidence Collection Kit (GBI/DOFS). The findings of the exam should be documented completely, noting injuries on the relevant anatomical diagrams. After the examination and evidence collection are completed, the examiner should check the labeling of all evidence, and package it as instructed in the assault kit. Deliver the assault kit and (with the consent of the patient) a copy of the medical record to a law enforcement official. The official should sign for this material, establishing a "chain of evidence."

**Georgia Code 35-1-2**, Examination of Sexual Assault Victims: reports places mandatory restrictions on the processing of kits and the notification rights of the victim with respect to the kit processing and results. This code section can be found in the appendix.

Aftercare instructions and education are also provided at this time. The patient should be strongly encouraged to follow-up with subsequent treatments and to utilize supportive individuals or groups in the community who offer services to victims of sexual assault. Any literature on or by these individuals or groups may be provided at this time. Counseling and emotional support are continued, though this support may shift to other providers.

## Chapter 5

### Prosecution

#### I. Victim Expectation and the Role of the Prosecutor

Sexual assault victims have been subjected to one of the most traumatic experiences possible. They expect that the prosecutor will represent their interests in what they perceive to be their case. Prosecutors, on the other hand, do not have the primary responsibility to represent the personal interests of a victim. Their constitutional duty requires that they represent society as a whole in the State's cases. Because sexual assault victims see themselves as the aggrieved parties they also expect to participate in the decisions made concerning the processing of their cases. This dissonance caused by the tension between victim expectation and prosecutorial duty has been a source of conflict and concern.

This protocol does not advocate altering the level of discretion entrusted to the prosecutor. It does endorse consideration of victims' needs in the exercise of prosecutorial discretion. Sexual assault victims deserve to be informed about the reasons for decisions that may appear to be adverse to their interests. It is likewise important that they be allowed some means of communicating their opinions and concerns within the criminal justice system. The following recommendations are made in an attempt to address these concerns.

#### II. Recommendations for Prosecutors in Working with Sexual Assault Victims

- A. Prosecutors should assume ultimate responsibility for informing victims of the status of a case in accordance with the Crime Victims' Bill of Rights. This responsibility includes the following specific statutory requirements:
- Upon initial contact with a victim, a prosecuting attorney shall give prompt notification of the following:
    - The procedural steps in processing a criminal case
    - The rights and procedures of victims under the Victims' Bill of Rights
    - Suggested procedures if the victim is subjected to threats or intimidation
    - The names and telephone numbers of contact persons at both the office of the custodial authority and in the prosecuting attorney's office. **O.C.G.A. §17-17-1 (a) (as amended)**. A custodial authority is a warden, sheriff, jailer, correctional officer, employee at the Department of Corrections, or any other law enforcement officer having actual custody of the accused
  - Whenever possible, the prosecuting attorney shall notify the victim prior to any proceeding in which the release of the accused will be considered. **O.C.G.A. §17-17-1 (c) (as amended)**
  - Whenever possible, the prosecuting attorney shall offer the victim the opportunity to express an opinion on the release of the accused pending judicial proceedings. **O.C.G.A. §17-17-1 (d) (as amended)**

- If requested in writing by the victim and to the extent possible, the prosecuting attorney shall give prompt advance notification of any scheduled court proceedings and notice of any changes to that schedule. Court proceedings shall include, but not be limited to, pretrial commitment hearings, arraignment, motion hearings, trial, sentencing, appellate review, and post-conviction relief. The prosecuting attorney shall notify all victims of the requirement to make such requests in writing **O.C.G.A. §17-17-1 (b) (as amended)**
  - The prosecuting attorney shall offer the victim the opportunity to express an opinion on the disposition of an accused case, including the views of the victim regarding plea or sentence negotiations and the perpetrator's participation in pretrial or post-conviction diversion programs **O.C.G.A. §17-17-11 (as amended)**
  - Upon the written request of the victim, the prosecuting attorney shall notify the victim of the following:
    - That the accused has filed a motion for new trial or an appeal of the conviction
    - Whether the accused has been released on bail or other recognizance pending the disposition of the motion or appeal
    - The result of the motion or appeal **O.C.G.A. §17-17-12 (a) (as amended)**
  - In the event the accused is granted a new trial or the conviction is reversed or remanded and the case is returned to the trial court for further proceedings, the victim shall be entitled to request the rights and privileges provided by the Victims' Bill of Rights **O.C.G.A. §17-17-12 (b) (as amended)**
- A. Procedures compatible with a particular jurisdiction should be established by each prosecutor to ensure that the above statutory requirements are satisfied.
  - B. Prosecutors should charge and pursue to the fullest extent of the law defendants who harass, threaten, injure, or otherwise attempt to intimidate or retaliate against victims or witnesses.
  - C. Prosecutors should discourage case continuances once the State has completed its trial preparation. The new court date, as well as the reason for the continuance, should be explained to the victim.
  - D. Prosecutors' office should establish and maintain direct liaison with victims and victim service agencies.
  - E. Whether following statutory requirements, complying with office procedures or making personal contacts, prosecutors must continuously be cognizant of the profound impact that the crimes of sexual violence have on both child and adult victims and their families.

## II. Suggested Criteria in Deciding Whether or Not to Prosecute

Although there is no set number or type of factors which must be present before a case involving sexual assault is deemed prosecutable, there are variables which should be considered in making this decision. These include, but are not limited to the following:

- Whether or not there is independent evidence of the assault, such as eyewitnesses, photographs of injuries, forensic evidence, or admissions of the defendant
- The availability and extent of cooperation of the victim
- What negative impact testifying would have on the victim
- The existence of a past history of assaults, whether charged or uncharged, by the defendant

#### **IV. General Procedures for Handling Sexual Assault Cases**

##### **A. Initial Screening**

After assignment, sexual assault cases should be reviewed by the prosecutor as soon as possible. The purpose of this initial screening is to determine the priority to be given the case and what additional investigation needs to be done in preparing the case for disposition. In conducting this initial screening, the prosecutor should consider the facts of the case and the following variables:

- The extent or seriousness of the injuries
- Use of gun or other weapon
- Defendant's prior criminal history
- Status of defendant's arrest
- Victim cooperation
- Presence and amount of information and evidence of the assault

As part of the initial screening, the prosecutor should make a diligent effort to contact the victim as quickly as possible. The following should be reviewed with the victim:

- It is the State, not the victim, which must determine what disposition is to be made of the case. This is particularly important in cases in which the victim's attacker is a family member or close friend
- The victim's sole responsibility is to testify truthfully in court regarding the incident
- The parties in the action are the State of Georgia and the defendant
- Where the victim knows the attacker, determine if the defendant and victim have talked since the incident and what was said
- Convey that the victim is not responsible for the defendant's behavior; the defendant bears that responsibility
- Encourage and support the victim
- Determine whether or not the victim has received the statutorily required notices and information
- Refer victim to those agencies which may be operating in the community to assist victims
- Never assume that defendant will use the most likely defense. Analyze the case and be prepared to meet unlikely defenses

If a victim relays information to the prosecutor about the incident, it is at the sole discretion of the prosecutor as to whether such information should be recorded or reduced to writing, and if reduced to writing as to whether it should be signed and dated by the victim. In the event that the victim is hostile or is otherwise unwilling or unable to cooperate with the attorney in the

prosecution of the case, then it will be necessary for the prosecutor to determine if there exists sufficient independent evidence to prove the elements of the assault. Such independent evidence may include, but is not limited to, the following:

- Injuries observed by someone other than the victim
- Medical reports/evidence of the assault
- Eyewitnesses to the crime
- A 911 tape or other recording of a prior statement of the victim concerning the assault
- The presence/availability of physical evidence indicating the crime occurred, e.g., semen, blood, etc.
- Admissions by the defendant
- Any and all photographic evidence gathered at the scene or subsequently

If a victim is unwilling or unable to cooperate in the prosecution of the case, but sufficient independent evidence exists, then the case should be pursued by the prosecutor. If such independent evidence does not exist, then the prosecutor should determine how and whether to continue the prosecution, including requiring the testimony of a non-cooperative witness when the witness is competent and legally available.

## **B. Pre-Indictment Checklist**

When it has been determined to proceed with a case, the following preparations may be made before the case is presented to the Grand Jury:

- Any corroborating or conflicting witnesses should be interviewed
- Names, addresses and phone numbers of all witnesses are included in the case file
- A complete criminal history of the defendant is in the file
- All medical reports have been obtained and placed in the file
- Where applicable, photographs of the victim's injuries have been received and reviewed
- Contact has been made with the victim-witness assistant and service agencies which have been working with the victim
- All police reports have been received and reviewed
- All lab tests have been initiated
- Rape kit has been sent to the crime lab

Notwithstanding the above, the prosecutor retains full discretion to proceed to Grand Jury at any time as soon as sufficient evidence to establish probable cause is available.

## **C. Trial**

### **General Considerations**

In sexual assault cases there are several factors which, if not unique to these offenses, are more likely to influence the court trial. One factor is the extreme embarrassment or humiliation a victim may suffer in having to testify about the assault in open court. Efforts should be made to



prepare the victim for these emotions and to "shield" the victim as much as possible while giving testimony.

Another factor to assess in the trial to these crimes is the prejudice and preconceived notions people often have of someone who has been sexually assaulted. For example, jurors may scrutinize the clothing and conduct of a victim and the victim's choices made prior to the assault. Similarly, jurors are likely to pay closer attention to the clothing and conduct of the victim in court than would be the case with a burglary charge. The prosecutor should be sensitive to this in presenting the case to the jury.

Depending on the type of assault, there may be other factors that will have a special impact on the case because it is a sexual assault crime. The prosecutor should be sensitive to the presence of these factors in preparing for and conducting the trial.

## **Appendix I: Checklists**

### **Checklist: Victim Services**

#### **1. Initial Report**

- Determine if victim is in immediate danger
- Ascertain if emergency medical assistance is needed
- Help identify and address the immediate concerns of the victim
- Provide honest and realistic answers about law enforcement and the criminal justice system Ask if victim wants to report the crime to police
- Offer crisis intervention or counseling services; inform about local sexual assault center
- Caution victim against destruction of evidence
- Arrange transportation to and from hospital
- Establish interagency coordination procedures

#### **2. Medical Examination**

- Provide victim with emotional support during examination
- With victim's permission, discuss assault with family and provide support to secondary victims
- Ensure victim has clothing to wear home from hospital
- Provide toiletries for use after the medical examination is completed

#### **3. Crime Victims' Compensation**

- Assist victim with completing application for victim compensation, or confirm application process has been initiated by another agency
- Follow-up with victim on application to ensure timely processing

#### **4. Investigation**

- Know the Georgia Victims' Bill of Rights and work closely with law enforcement, prosecutors, local jail, Board of Pardons and Paroles, and Department of Corrections to ensure all procedures for notifications (from arrest to parole) are in place
- Establish procedures to facilitate communication between law enforcement investigators and victim
- Provide support for victim participation in the investigation

#### **5. Arrest**

- Make sure victim knows that law enforcement will inform the victim of the arrest of a suspected perpetrator and that the victim must keep law enforcement apprised of current address and phone number
- Act as liaison between jail and victim so victim can be informed when there is a change in custody status of suspected assailant

## 6. Pre-trial

\_\_\_ Establish procedures for notifying victim of case status and postponements of changes in court appearances, using the Victims' Bill of Rights as a guideline (See the Appendix)

\_\_\_ Provide victim with a written, concise explanation of the criminal justice system (See the Appendix)

\_\_\_ Prepare victim for the possibility of questions from the prosecutor about the impact of the crime; Explain to the victim the purpose and use of the Victim Impact Statement which would inform the prosecutor of the physical, financial, and emotional impact of the crime; Let victim decide whether or not to fill out this form at this time; A sample form is found in the Appendix

\_\_\_ Provide guidance for facilitating victim/prosecutor communications concerning plea negotiations, which is a discussion about the possibility of the accused admitting guilt without a trial in return for a reduced sentence

\_\_\_ Accompany a victim to any pre-trial court hearings or notify victim of results if victim is not present

\_\_\_ Determine who can provide notification about postponements or changes in court appearances

## 7. Trial

\_\_\_ Accompany victim to court hearings

\_\_\_ Support establishment of convenient parking for victims near the courthouse

\_\_\_ If there is not a separate waiting area for the victim, request that the judge keep contact between the victim and alleged perpetrator to a minimum

\_\_\_ Explain courtroom etiquette and procedures to victim

\_\_\_ Prepare victim for the possibility of media coverage and questions

\_\_\_ Arrange special assistance or transportation for victims with special needs (medical, handicapped, etc.)

## 8. Sentencing

\_\_\_ Assist victim with the preparation of a Victim Impact Statement, if not already prepared

\_\_\_ Communicate with prosecutor about whether victim will be allowed to speak about the impact of the crime during sentencing phase

\_\_\_ Continue court accompaniment and support

## 9. Post-sentencing

\_\_\_ Explain to victim how to request notification from the Department of Corrections of change of perpetrator's status in custody (escape, death, transfer, etc.)

\_\_\_ Help victim update or prepare Victim Impact Statement to be mailed to the State Board of Pardons and Paroles and/or, if applicable, to the Probation Division of the Department of Corrections

\_\_\_ Explain procedures for victim's being notified by the State Board of Pardons and Paroles of the release of inmate from the state prison system

\_\_\_ Explain procedure for victim to appear in person at the State Board of Pardons and Paroles

\_\_\_ If applicable, explain restitution collection and procedures

\_\_\_ Remind victim to notify the Georgia Board of Pardons and Paroles or the Department of Corrections, Probation Division and the Probations Officer of any change of address or phone number; The address of the victim is confidential and will not be released to the inmate by the Board of Pardons and Paroles or the Department of Corrections

- \_\_\_ Explain to victim how to claim any personal property held as evidence
- \_\_\_ Provide guidelines for reporting harassment or violation of protection orders by perpetrator
- \_\_\_ Provide victim with name, address, and telephone number of the perpetrator's probation officer so that the victim may notify the probation officer of any unauthorized contact made by the perpetrator
- \_\_\_ Explain procedures regarding perpetrators who are put on probation or given split sentences, i.e. sentenced to prison followed by a periods of parole and/or probation

**10. Ongoing Victim Services**

\_\_\_ Provide referrals to victim for other community services; Referrals may include, but are not limited to the following:

**Counseling:**

- Mustard Seed
- Turning Points Counseling Center
- The Children's Center for Hope and Healing
- Avita Community Partners
- Family Art Therapy Center
- Family Resource Center of Habersham County

**Sexual Assault Centers:**

- Rape Response (Habersham County)
- FAITH (Rabun and Stephens County)

**Domestic Violence:**

- Circle of Hope (Habersham and Stephens County)
- FAITH (Rabun County)

\_\_\_ Provide continuing support, intervention or counseling as long as victim requests it

\_\_\_ Offer a 24-hour crisis line for victims and their families

## Checklist: Law Enforcement

### 1. Emergency Dispatcher

If possible contact the medical facility and have them notify the Sexual Assault Nurse Examiner (SANE) that a victim is being transported for medical attention, unless the situation is life threatening, or if other medical treatment is immediately necessary

Quickly obtain the victim's name and location

Ascertain safety of victim

Dispatch appropriate law enforcement units

Dispatch emergency medical care

Maintain an open line with the victim

Keep victim calm/advise that help is on the way

Request that victim not wash, change clothes, disturb crime scene, etc.

If possible, obtain information from the victim about the sexual assault

Relay helpful information to officers

Preserve a record of emergency communications, including the victim's call, for later use as evidence

### 2. The Responding Officer

#### A. At the Scene

Reach victim as quickly as possible

Determine victim's physical/medical needs

Request emergency care if needed

Calm and reassure the victim

Inform victim of actions being taken

Prevent destruction of evidence by victim and others

Make arrangements for transportation of victim to medical facility

Contact family or friend

Contact victim or sexual assault advocate

Arrange change of clothing for victim

If appropriate, question victim about suspect's identity or description, clothing, method of transportation and direction of flight

Request presence of Forensic/ID unit

Request presence of detectives at medical facility

Preserve integrity of entire crime scene

Preserve victim's clothing and effects for Forensic/ID unit

Start crime scene access log

Brief arriving Forensic/ID unit officers

#### B. At Medical Facility

Remain at facility until detectives arrive

Brief responding detectives on known facts of the case

### C. Incident Report

- Date and time of dispatch, arrival at and exit from scene
- Nature of dispatch
- Describe location and condition of the scene
- Identifying information on victim
- Injuries/emotional state of victim
- Requests for additional assistance, including officers
- Actions taken for the victim
- Actions taken to preserve crime scene
- All information learned about assault from victims
- All other information learned about a case

### 3. Victims' Bill of Rights

- Provide victim with written information about the Georgia Crime Victims' Bill of Rights, **OCGA § 17-17-1**

### 4. Case Report Checklist

- Primary officer's incident report
- Reports filed by other officers
- Crime scene access log
- Written statement of the victim
- Copy of recorded statement of the victim
- Statements of witnesses
- Copies of recorded statements of witnesses
- Chief investigator's case activity log
- Chief investigator's case summary
- Wanted poster/composite drawings
- Photographic line ups; admonitions
- Reports of anonymous crime information from sources such as Silent Witness and Crime Stoppers
- Statements of assailant; non-custodial
- Statements of assailant to arresting officers
- Statements of assailant to civilians
- Constitutional rights; Miranda law
- All of assailant's custodial statements to law enforcement
- Copies of all recorded assailant statements
- Diagram of crime scene
- Photos of victim
- Property of evidence forms
- List of property in police custody
- List of property sent to the Crime Lab
- NCIC criminal history
- Local agency's criminal history
- Juvenile history data
- Probation/parole data
- Booking photo of assailant
- Reports on police calls to assailant's address

- \_\_\_ 911 calls on sexual assault case
- \_\_\_ Transcript of 911 calls
- \_\_\_ Computer printout of address and phone number of 911 caller
- \_\_\_ Written report from Forensic/ID Unit
- \_\_\_ Weapon follow-up (NCIC/ATF)
- \_\_\_ Crime lab reports note: **GA Code 35-1-2**
- \_\_\_ EMS reports
- \_\_\_ Medical facility reports
- \_\_\_ Copies of news articles
- \_\_\_ Copies of affidavits for search warrant, warrants and returns
- \_\_\_ Copies of Consent to Search forms
- \_\_\_ Copies of other judicial orders
- \_\_\_ Copy of arrest warrant
- \_\_\_ Arrest and booking report
- \_\_\_ Arraignment sheet

## **Checklist: Prosecution, Working With Sexual Assault Victims**

### **1. General**

- Notify victim of all hearings and changes in schedules
- Consider the needs of the victim when scheduling case-related activities, e.g., religious holidays, health requirements, family activities and occupational requirements
- Facilitate victim participation in all activities at which the assailant has a right to be present
- Establish communication methods to avoid unnecessary trips for the victim to the courthouse, e.g., electronic pagers, on-call system for victims or voice mail system for victims to call in and receive current case status information
- Object to requests for continuances that are dilatory and do no benefit the State or victim

### **2. Preliminary Hearings, Arraignment and Bail Hearings**

- Make every effort to discuss desired conditions of release with sexual assault victim prior to bail hearing
- Request that any release on bond include protection orders for the victim
- Keep victim informed about the detention status of the suspected assailant, and/or make sure that the victim has the name and telephone number of a contact person at the detention facility who will inform the victim as to detention status
- When possible, allow the victim to express concerns about the danger posed by the suspected assailant

### **3. Plea Negotiations**

- Inform victim of reasons to consider a negotiated plea
- Describe optional courses of action other than a negotiated plea
- In determining appropriate case disposition, take into consideration the desires/concerns of the victim
- Consider the needs of the victim in accepting a plea, e.g., restitution, protection, emotional security
- Provide sexual assault victim some method for making concerns, feelings, or needs known to the court at or before sentencing on a plea

### **4. Trial**

- Provide separate areas for victims and defense witnesses
- Provide court accompaniment for victim
- Keep victim informed about court schedules: dates, times and places
- Provide information and explanation to employers, teachers, etc., as to the necessity of the victim's presence at court proceedings

### **5. Sentencing**

- Ensure opportunity for a victim impact statement as a part of sentencing considerations
- Provide victims some method for making their concerns, feelings, or needs, known to the court at, or before the sentencing hearing
- Include victim needs as part of sentence, e.g., restitution, protection, emotional security



**6. Post Sentencing**

\_\_\_ Inform victim of the name and telephone number of the appropriate contact person at the State Board of Pardons and Paroles and the Probation Division of the Department of Corrections for such information as changes in offender status, dates of scheduled parole hearings, and method for updating victim impact statement

\_\_\_ Whenever possible, accompany victim to any parole hearing

\_\_\_ Provide priority prosecution for violations of release conditions

## Appendix II: Sexual Assault Examination and Evidence Collection

### Sample Forms

Patient's Name \_\_\_\_\_  
(First) (Middle) (Last)

Social Security Number \_\_\_\_\_ Medical Record Number \_\_\_\_\_

Address \_\_\_\_\_  
(Street) (Apt #)  
\_\_\_\_\_  
(City) (State) (Country) (Zip)

Phone (H) \_\_\_\_\_ Phone (W) \_\_\_\_\_ Date of Birth \_\_\_\_/\_\_\_\_/\_\_\_\_ Age \_\_\_\_

Sex  Male  Female Ethnicity  Caucasian  Afr-Amer  Asian  Hispanic  Other

Patient escorted by \_\_\_\_\_ Relationship \_\_\_\_\_

Agency of escort \_\_\_\_\_ Mode of Transportation \_\_\_\_\_

Hospital or Site of Exam \_\_\_\_\_ City \_\_\_\_\_

Arrival Date \_\_\_\_ Arrival Time \_\_\_\_\_

### Phone Report to Law Enforcement Agency

Agency \_\_\_\_\_ Phone \_\_\_\_\_

Name of Officer taking report \_\_\_\_\_

Case Number \_\_\_\_\_ County \_\_\_\_\_

Responding Officer \_\_\_\_\_ Phone \_\_\_\_\_

Agency/Unit \_\_\_\_\_ ID Number \_\_\_\_\_

Consents To:	YES	NO
Collection and release of evidence	<input type="checkbox"/>	<input type="checkbox"/>
Photography	<input type="checkbox"/>	<input type="checkbox"/>
HIV Testing	<input type="checkbox"/>	<input type="checkbox"/>
Post-coital contraception	<input type="checkbox"/>	<input type="checkbox"/>
Release of medical records to law enforcement	<input type="checkbox"/>	<input type="checkbox"/>

Sexual assault center Volunteer Contacted  Yes  No

**History and Circumstance of Assault (Complete narrative history on following page)**

Person providing history \_\_\_\_\_ Relationship to patient \_\_\_\_\_

Person taking history \_\_\_\_\_ Others present \_\_\_\_\_

Date of **Assault** \_\_\_\_\_ Time of **Assault** \_\_\_\_\_ Number of Assailants \_\_\_\_\_

Location and physical surrounding of assault (bed, floor, car, field, etc.) \_\_\_\_\_

Name of suspect(s), if known	MALE	FEMALE	Relationship to victim
_____	[ ]	[ ]	_____
_____	[ ]	[ ]	_____
_____	[ ]	[ ]	_____
_____	[ ]	[ ]	_____

**Condition of clothing upon arrival** (Note and describe any rips, tears, presence of foreign materials)

\_\_\_\_\_

\_\_\_\_\_

Collect outer clothing and underclothes worn during or immediately after assault. Have victim remove clothes over white floor drape. Place each item in a separate, clean paper bag. When completed, place floor drape in separate bag as well. Label each bag appropriately and list clothing. If victim has changed clothes since the assault occurred, collect only those clothes that have been in direct contact with genital area or where possible semen stains may be found.

Item(s) \_\_\_\_\_

\_\_\_\_\_

Completed [ ] Not applicable [ ]

**Physical Injuries and/or Pain Described by**

**Patient** Record description \_\_\_\_\_

Lapses of consciousness [ ] Yes [ ] No  
 Vomiting [ ] Yes [ ] No

**Acts Described by Patient**

<b>Vaginal contact</b>	YES	NO	UNSURE	If more than one assailant, identify person:
By Penis	[ ]	[ ]	[ ]	_____
By Finger	[ ]	( )	[ ]	_____

With Foreign Object [ ] [ ] [ ] \_\_\_\_\_  
 If foreign object, describe object \_\_\_\_\_

**Anal contact** YES NO UNSURE **If more than one assailant, identify person:**  
 By Penis [ ] [ ] [ ] \_\_\_\_\_  
 By Finger [ ] [ ] [ ] \_\_\_\_\_  
 With Foreign Object [ ] [ ] [ ] \_\_\_\_\_

\_\_\_\_\_ If foreign object, describe object \_\_\_\_\_

**Oral to Genitals** YES NO UNSURE **If more than one assailant, Identify person:**  
 Of victim by assailant [ ] [ ] [ ] \_\_\_\_\_  
 Of assailant by victim [ ] [ ] [ ] \_\_\_\_\_

**Oral to Anus** YES NO UNSURE **If more than one assailant, identify person:**  
 Of victim by assailant [ ] [ ] [ ] \_\_\_\_\_  
 Of assailant by victim [ ] [ ] [ ] \_\_\_\_\_

**Masturbation** YES NO UNSURE **If more than one assailant, identify person:**  
 Of victim by assailant [ ] [ ] [ ] \_\_\_\_\_  
 Of assailant by victim [ ] [ ] Other [ ] \_\_\_\_\_  
                                   [ ] [ ] [ ] \_\_\_\_\_

**Ejaculation** YES NO UNSURE **If more than one assailant, identify person:**  
 Inside vagina [ ] ( ) [ ] \_\_\_\_\_  
 Inside other orifice [ ] [ ] [ ] \_\_\_\_\_  
 Outside on body [ ] [ ] [ ] \_\_\_\_\_

\_\_\_\_\_ If outside, give location on body \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Contraception** YES NO UNSURE **If more than one Assailant, Identify person:**  
 Condom used [ ] [ ] [ ] \_\_\_\_\_  
 Foam used [ ] [ ] [ ] \_\_\_\_\_  
 Jelly used [ ] [ ] [ ] \_\_\_\_\_  
 Lubricant used [ ] [ ] [ ] \_\_\_\_\_

<b>Other Acts</b>	YES	NO	UNSURE	If more than one assailant, identify
person:				
Fondling	[ ]	[ ]	[ ]	_____
Licking	[ ]	[ ]	[ ]	_____
Kissing	[ ]	[ ]	[ ]	_____

If yes, describe specifics and location on body \_\_\_\_\_.

Describe any other acts committed by assailant(s) or required of victim. \_\_\_\_\_

**Methods Employed by Assailant(s)**

	YES	NO	If yes, describe:
Weapon inflicted injuries	[ ]	[ ]	_____
Type(s) of weapon			_____
Physical blows by hands	[ ]	[ ]	_____
Physical blows by feet	[ ]	[ ]	_____
Physical restraints	[ ]	[ ]	_____
Type(s) restraints used			_____
<b>Bites</b>	[ ]	[ ]	_____
Choking	[ ]	[ ]	_____
Burns (incl. chemical/toxic)	[ ]	[ ]	_____

	YES	NO
Threat(s) of Harm	[ ]	[ ]
Threats to whom _____		
Type of threats _____		
Any Other Methods Used	[ ] Yes	[ ] No

**Describe** \_\_\_\_\_

**Post-assault Hygiene or Activities (Complete only if less than 72 hours since assault)**

	YES	NO		YES	NO
Urinated	[ ]	[ ]	Removed/inserted diaphragm	[ ]	[ ]
Defecated	[ ]	[ ]	Brushed teeth	[ ]	[ ]
Genital wipe/wash	[ ]	[ ]	Oral gargle or swish	[ ]	[ ]
Bath/shower	[ ]	[ ]	Changed clothing	[ ]	[ ]
Douche	[ ]	[ ]	Ingested food/liquid	[ ]	[ ]
Removed/inserted tampon	[ ]	[ ]			
Removed/inserted sponge	[ ]	[ ]			

If medication was taken, list names of drugs. \_\_\_\_\_

**Other Relevant Sexual History**

	YES	NO
Consenting intercourse within past 72 hours	[ ]	[ ]
If yes, approximate date and time: _____		
Was condom used	[ ]	[ ]
Did victim douche following consensual sex	[ ]	[ ]

**1. Perform Routine Physical Examination**

**2. Collect Forensic Evidence**

Collect forensic evidence using recommended GBI/DOFS Sexual Assault Evidence Collection Kit (hereafter, "Assault Kit") if examination is within 120 hours of assault. May consider using Assault Kit if assault occurred within last 5 days. **NOTE: Please remove any unused portions of Assault Kit after collecting relevant evidence.**

**Describe general appearance.**

**Record demeanor** (Check all that apply)

Quiet	<input type="checkbox"/>	Tearful/sobbing	<input type="checkbox"/>	Responsive to questions	<input type="checkbox"/>
Tense	<input type="checkbox"/>	Agitated	<input type="checkbox"/>	Odor of alcohol	<input type="checkbox"/>
Trembling	<input type="checkbox"/>	Nervous smiling	<input type="checkbox"/>	Other (specify):	
Brief responses	<input type="checkbox"/>	Angry	<input type="checkbox"/>	_____	

**Record injuries and findings on diagrams** (located at end of form). Note size and appearance of any erythema, abrasions, bruises (detail shape), contusions, indurations, lacerations, fractures, bites, burns, and stains of foreign materials on the body. An injury suspected to be a bite mark may require special attention and should be reported promptly to law enforcement

Photographs taken  Yes  No By \_\_\_\_\_  
Area(s) of body **photographed**. \_\_\_\_\_

**Collect any moist or dried secretions, stains, and foreign materials from the body.** Identify location of collection and label evidence container with sample description and location on body. Dry swabs before packaging.

**Collect fingernail samples** only if skin, blood, or trace evidence is visible or strongly indicated by case history to be present. Collect obvious blood or other questionable material with tweezers or cut fingernail(s). Can take fingernail scrapings if nails are synthetic or cannot be cut. Label evidence container(s) appropriately and seal.

**Collect head hair reference** standards by plucking or combing with a fine-toothed comb to obtain 25 random head hairs.

**Examine oral cavity and area around the mouth** for seminal fluid, noting frenulum trauma. If indicated by history, swab the area inside mouth up to 6 hours post-assault.

Collect 2 swabs from the oral cavity

1 swab for dry mount slide. Prepare slide; dry and save swab.

1 swab to be dried and saved.

After both swabs and slide are dried, enclose in evidence container and label and seal appropriately.

**Examine external genitalia and perianal area**, including the inner thighs for injury and foreign material. Record injuries and findings on diagrams.

Photographs taken  Yes  No

Collect any suspicious substance as previously described and remove suspected foreign material with tweezers. Package each appropriately, identify container with sample description and location, and seal.

**Collect pubic hair samples** over provided paper towel by initially cutting any matted hair. Gently comb pubic hair with wide-tooth comb to collect any loose hairs or other foreign materials.

**Collect pubic hair reference standards** by combing with a fine-toothed comb to obtain 25 random pubic hairs. If it is not possible to obtain 25 hairs by combing, plucking may become necessary at a later time.

**For male victims, collect 4 penile swabs** using moistened cotton-tipped applicators from the urethral meatus, glans and shaft if oral or vaginal contact is reported. Air dry all swabs and label evidence container appropriately before enclosing.

**Examine Vagina and Cervix** for injury or foreign materials and record on diagrams.

Indicate method of exam  Direct visualization  Colposcope

Collect six (6) swabs as follows:

3 swabs from vaginal pool unless cervix is not visualized, then collect a total of four (4) swabs from vagina:

1 swab for wet mount slide. Examine for motile spermatozoa. Dry and save swab.

1 swab for dry mount slide. Prepare slide; dry and save swab.

1 swab (or 2 swabs if the cervix is not visualized) to be dried and saved.

3 swabs from cervix:

1 swab for dry mount slide. Prepare slide; dry and save swab.

2 swabs to be dried and saved.

After all swabs are dried, enclose in evidence container and appropriately label and seal.

Examination for motile sperm revealed:  motile sperm  non-motile sperm  no sperm seen

**Examine Anus and Rectum.** Observe buttocks, perianal skin, and anal folds for injury or foreign materials and record on diagrams. Collect any moist or dried secretions and foreign materials (including lubricants).

Indicate method of exam  Direct visualization  Digital exam  Colposcopic exam  
 Anoscopic exam  Proctoscopic exam

If indicated by medical findings or history, collect as follows:

4 swabs from rectum (For female victims, clean perianal area with water prior to collection to limit contamination/extension of secretions for the vaginal area.).

1 swab for dry mount slide. Prepare slide, dry and save swab.

3 swabs to be dried and saved.

After all 4 swabs are dried, enclose in evidence container and appropriately label and seal.

Any recent (within 60 days) anal/genital injuries, surgeries, diagnostic procedures, or medical treatment that may affect physical findings. If yes, record on separate medical chart.  Yes  No

X-rays required:  Yes  No



**Summary of Genital Trauma** (Check if evidence of trauma is present)

Female		Male		Describe
Labia major	[ ]	Urethral	[ ]	
Labia minor	[ ]			Periurethral [ ]
Clitoris	[ ]	Penis	[ ]	)
Periurethral tissue		[ ]	[ ]	Scrotum [ ]
Hymen	[ ]			Testicles [ ]
Posterior fourchette				Vas/epididymis [ ]
Fossa navicularis				Perineum [ ]
Vagina	[ ]			
<b>Anal/Rectal Trauma</b>		Describe		
Perianal	[ ]			
Anal	(			)

**Summary of Forensic Evidence**

Collected by \_\_\_\_\_

Clothing

(directed by case officer)	[ ]	[ ]	[ ]	_____
Photographs	[ ]	[ ]	[ ]	_____
Foreign material from body	[ ]	[ ]	[ ]	_____
Suspected blood from assailant	[ ]	[ ]	[ ]	_____
Dried secretions	[ ]	[ ]	[ ]	_____
Fibers or loose hair	[ ]	[ ]	[ ]	_____
Vegetation	[ ]	[ ]	[ ]	_____
Fingernail cuttings or scrapings	[ ]	[ ]	[ ]	_____
Reference head hair samples	[ ]	[ ]	[ ]	_____
Oral swabs	[ ]	[ ]	[ ]	_____
Oral smears	[ ]	[ ]	[ ]	_____
Matted pubic hair	[ ]	[ ]	( )	_____
Pubic hair combings	[ ]	[ ]	[ ]	_____
Reference pubic hair samples	[ ]	[ ]	[ ]	_____
Penile swabs, dry	[ ]	[ ]	[ ]	_____
Vaginal/cervical swabs, dry	[ ]	[ ]	[ ]	_____
Vaginal/cervical smears	[ ]	[ ]	[ ]	_____
Perianal swabs, dry	[ ]	[ ]	[ ]	_____
Perianal smears	[ ]	[ ]	[ ]	_____
Rectal swabs, dry	[ ]	[ ]	[ ]	_____
Rectal smears	[ ]	[ ]	[ ]	_____
Drug Screen	[ ]	[ ]	[ ]	_____
Alcohol	[ ]	[ ]	[ ]	_____

Return evidence containers to Assault Kit after ensuring that all materials are appropriately dried and packaging is adequately labeled and sealed. Seal kit with provided evidence tape and initial/date for chain of custody. Complete all documentation (including presence or absence of

motile sperm) on Assault Kit.

Note Georgia Code 35-1-2 concerning procedures for Law Enforcement processing of kits and victim notification after a kit is processed. Code 35-1-2 can be found in the appendix.

**Chain of Evidence** (Please PRINT except as indicated)

Specimens labeled/sealed by \_\_\_\_\_ Phone \_\_\_\_\_

Physical examination performed by \_\_\_\_\_ Phone \_\_\_\_\_

Discharge Date \_\_\_\_\_ Discharge Time \_\_\_\_\_

Signature of Physical Examiner \_\_\_\_\_

Evidence released by \_\_\_\_\_ Phone \_\_\_\_\_

Items released       Sealed Assault Kit  
                          \_\_\_ Sealed bags of  
                         Clothing  
                          Photographs  
                          X-Rays  
                          Copy of this form  
                          Other \_\_\_\_\_

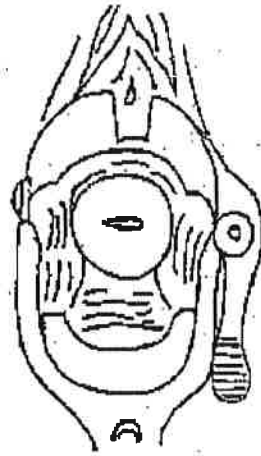
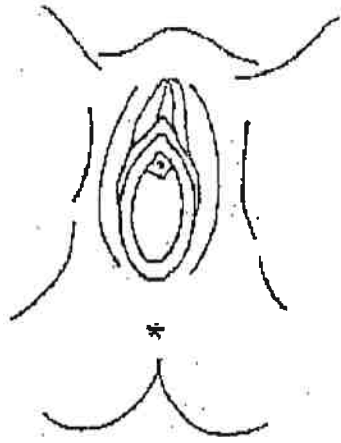
Law Enforcement Officer \_\_\_\_\_ Phone \_\_\_\_\_

Agency \_\_\_\_\_ Badge Number \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

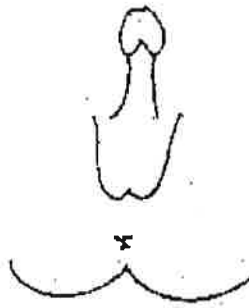
I have received the indicated items above as evidence

Signature of Officer \_\_\_\_\_

**Female**



**Male**



### Appendix III: Law Cited In Sexual Assault Protocol:

#### **O.C.G.A. § 15-24-1**

##### **Definitions**

As used in this chapter, the term:

- (1) "Protocol committee" or "committee" means a multidisciplinary, multiagency sexual assault committee established for a county pursuant to Code Section 15-24-2. The protocol committee is charged with developing local protocols to investigate and prosecute alleged cases of sexual assault.
- (2) "Sexual assault" means rape, sodomy, aggravated sodomy, incest, sexual battery, and aggravated sexual battery as those terms are defined in Chapter 6 of Title 16.

#### **O.C.G.A. § 15-24-2**

##### **Establishment of sexual assault protocol and committee; representatives to committee; purpose; annual meeting and review**

- (a) Each judicial circuit shall be required to establish a sexual assault protocol as provided in this Code section.
- (b) The chief superior court judge of each judicial circuit shall establish a sexual assault protocol committee as provided in subsection (c) of this Code section and shall appoint an interim chairperson who shall preside over the first meeting. The chief superior court judge shall appoint persons to fill any vacancies on the committee. Thus established, the committee shall thereafter elect a chairperson from its membership.
- (c)(1) Each of the following agencies of the judicial circuit shall designate a representative to serve on the committee:
  - (A) The office of the sheriff of each sheriff's office in the judicial circuit;
  - (B) The office of the district attorney;
  - (C) The magistrate court;
  - (D) The office of the chief of police of a county of each county within the judicial circuit in counties which have a county police department;
  - (E) The office of the chief of police of the largest municipality in the county of each county within the judicial circuit; and
  - (F) The county board of health of each county within the judicial circuit.
- (2) In addition to the representatives serving on the committee as provided for in paragraph (1) of this subsection, the chief superior court judge shall designate:
  - (A) A local citizen of the judicial circuit;
  - (B) A representative of a sexual assault or rape crisis center serving the judicial circuit or, if no such center exists, then a local citizen; and
  - (C) A health care professional who performs sexual assault examinations within the judicial circuit or, if no such person exists, then a local citizen.
- (3) If any designated agency fails to carry out its duties relating to participation on the committee, the chief superior court judge of the circuit may issue an order requiring the participation of such agency. Failure to comply with such order shall be cause for punishment as for contempt of court.

(d) The protocol committee shall adopt a written sexual assault protocol, a copy of which shall be furnished to each agency in the judicial circuit that handles cases of sexual assault. The protocol shall be a written document outlining in detail the procedures to be used in investigating, collecting evidence, paying for expenses related to evidence collection, and prosecuting cases arising from alleged sexual assault and shall take into consideration the provisions of Article 4 of Chapter 5 of Title 17. The protocol may provide for different procedures to be used within particular municipalities or counties within the judicial circuit. The protocol committee shall adopt a written sexual assault protocol no later than December 31, 2004. The protocol committee may incorporate sexual assault protocols used in the judicial circuit as they existed on or before July 1, 2004.

(e) The purpose of the protocol shall be to ensure coordination and cooperation between all agencies involved in sexual assault cases so as to increase the efficiency of all agencies handling such cases and to minimize the stress created for the alleged sexual assault victim by the legal and investigatory process; provided, however, that a failure by an agency to follow the protocol shall not constitute an affirmative or other defense to prosecution of a sexual assault, preclude the admissibility of evidence, nor shall a failure by an agency to follow the protocol give rise to a civil cause of action.

(t) Upon completion of the writing of the sexual assault protocol, the protocol committee shall continue in existence and shall meet at least annually for the purpose of evaluating the effectiveness of the protocol and appropriately modifying and updating same.

#### **O.C.G.A. § 17-5-55**

#### **Designation of custodian for introduced evidence; evidence log; storage, maintenance, and disposal of evidence**

(a) In all criminal cases, the court shall designate either the clerk of court, the court reporter, or any other officer of the court to be the custodian of any property that is introduced into evidence during the pendency of the case. Property introduced into evidence shall be identified or tagged with an exhibit number. After verdict and judgment has been entered in any criminal case, the person who has custody of the physical evidence introduced in the case shall inventory the evidence and create an evidence log within 30 days of the entry of the judgment. Within 30 days following the creation of the evidence log, physical evidence shall be returned to the rightful owner of the property unless the physical evidence itself is necessary for the appeal of the case, for a new trial, or for purposes of complying with this Code section or Code Section 17-5-56. The evidence log shall contain the case number, style of the case, description of the item, exhibit number, the name of the person creating the evidence log, and the location where the physical evidence is stored. After the evidence log is completed, the judge shall designate the clerk of court, the prosecuting attorney, or the law enforcement agency involved in prosecuting the case to obtain and store the evidence, and a notation shall appear in the evidence log indicating the transfer of evidence. If evidence is transferred to any other party, the evidence log shall be annotated to show the identity of the person or entity receiving the evidence, the date of the transfer, and the location of the evidence. The signature of any person or entity to which physical evidence is transferred shall be captured through electronic means that will be linked to the evidence log or the use of a property transfer form that will be filed with the evidence log. When physical evidence, other than audio or video recordings, is transferred to any person or entity, a photograph or other visual image of the evidence shall be made and placed in the case file.

(b) Physical evidence classified as dangerous or contraband by state or federal law, including, but not limited to, items described by state or federal law as controlled substances, dangerous drugs, explosives, weapons, ammunition, biomedical waste, hazardous substances, or hazardous waste shall be properly secured in a manner authorized by state or federal law. This evidence may be transferred to a government agency authorized to store or dispose of the material.

(c) Documents, photographs, and similar evidence shall be maintained and disposed of in accordance with records retention schedules adopted in accordance with Article 5 of Chapter 18 of Title 50, known as the "Georgia Records Act." Other physical evidence that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of the crime, shall be maintained in accordance with Code Section 17-5-56. A party to an extraordinary motion for new trial or a habeas corpus action in which DNA testing is sought that was filed prior to the expiration of the time prescribed for the preservation of evidence by this Code section may apply to the court in which the defendant was convicted for an order directing that the evidence be preserved beyond the time period prescribed by this Code section and until judgment in the action shall become final.

(d) Except as is otherwise provided in subsections (b) and (c) of this Code section or by law, following the expiration of the period of time set forth in subsections (b) and (c) of this Code section, physical evidence may be disposed of in accordance with the provisions of Article 5 of Chapter 12 of Title 44, known as the "Disposition of Unclaimed Property Act," or, in the case of property of historical or instructional value, as provided in Code Section 17-5-53.

#### **O.C.G.A. § 17-5-56**

##### **Maintenance of physical evidence containing biological material**

(a) Except as otherwise provided in Code Section 17-5-55, on or after May 27, 2003, governmental entities in possession of any physical evidence in a criminal case, including, but not limited to, a law enforcement agency or a prosecuting attorney, shall maintain any physical evidence collected at the time of the crime that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of the crime as provided in this Code section. Biological samples collected directly from any person for use as reference materials for testing or collected for the purpose of drug or alcohol testing shall not be preserved.

(b) In a case in which the death penalty is imposed, the evidence shall be maintained until the sentence in the case has been carried out. Evidence in all felony cases that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of the crime shall be maintained for the period of time that the crime remains unsolved or until the sentence in the case is completed, whichever occurs last.

## **O.C.G.A. § 17-5-70**

### **Definitions**

As used in this article, the term:

- (1) "Forensic medical examination" means an examination by a health care provider of a person who is a victim of a sexual assault. Such examination shall include a physical examination, documentation of biological and physical findings, and collection of physical evidence from the victim.
- (2) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the alleged sexual assault.
- (3) "Sexual assault" means rape, sodomy, aggravated sodomy, statutory rape, child molestation, aggravated child molestation, sexual assault against a person in custody, sexual assault against a person detained in a hospital or other institution, sexual assault by a practitioner of psychotherapy against a patient, incest, bestiality, sexual battery, and aggravated sexual battery as those terms and offenses are set forth and defined in Chapter 6 of Title 16.

## **O.C.G.A. § 17-5-71**

### **Preservation of evidence**

(a) Except as otherwise provided in subsection (b) of this Code section or Code Section 17-5-55 or 17-5-56, on or after May 12, 2008, the investigating law enforcement agency shall maintain any physical evidence collected as a result of an 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 an alleged sexual assault, for ten years after the report of the alleged sexual assault.

(b) If the victim does not cooperate with law enforcement in the investigation or prosecution of an alleged sexual assault, the investigating law enforcement agency 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.

## **O.C.G.A. § 17-5-72**

### **Right to free forensic medical examination**

A victim shall have the right to have a forensic medical examination regardless of whether the victim participates in the criminal justice system or cooperates with law enforcement in pursuing prosecution of the underlying crime. A victim shall not be required to pay, directly or indirectly, for the cost of a forensic medical examination. The cost of a forensic medical examination shall be paid for by the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of this title.



**O.C.G.A. § 17-5-73**

**Victim's right to refuse request for polygraph examinations or other truth-telling devices**

No prosecuting attorney, investigating law enforcement agency, or government official shall ask or require any victim of a sexual assault to submit to a polygraph examination or any other truth-telling device as a condition precedent to investigating such alleged crime. The refusal of

a victim to submit to a polygraph examination or any other truth-telling device shall not prevent an investigation or prosecution of any sexual assault.

**O.C.G.A. § 17-10-15**

**AIDS transmitting crimes; requiring defendant to submit to HIV test; report of results**

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual offense as defined in Code Section 31-22-9.1 or other crime which involves significant exposure as defined by subsection (g) of this Code section may request that the agency responsible for prosecuting the alleged offense request that the person arrested for such offense submit to a test for the human immunodeficiency virus and consent to the release of the test results to the victim. If the person so arrested declines to submit to such a test, the judge of the superior court in which the criminal charge is pending, upon a showing of probable cause that the person arrested for the offense committed the alleged crime and that significant exposure occurred, may order the test to be performed in compliance with the rules adopted by the Department of Public Health. The cost of the test shall be borne by the victim or by the arrested person, in the discretion of the court.

(c) Upon a verdict or plea of guilty or a plea of nolo contendere to any AIDS transmitting crime, the court in which that verdict is returned or plea entered shall require the defendant in such case to submit to an HIV test within 45 days following the date of such verdict or plea. The clerk of the court in such case shall mail, within three days following the date of that verdict or plea, a copy of that verdict or plea to the Department of Public Health.

(d) The Department of Public Health, within 30 days following receipt of the court's order under subsection (b) of this Code section or within 30 days following receipt of the copy of the verdict or plea under subsection (c) of this Code section, shall arrange for the HIV test for the person required to submit thereto.

(e) Any person required under this Code section to submit to the HIV test who fails or refuses to submit to the test arranged pursuant to subsection (d) of this Code section shall be subject to such measures deemed necessary by the court in which the order was entered, verdict was returned, or plea was entered to require involuntary submission to the HIV test, and submission thereto may also be made a condition of suspending or probating any part of that person's sentence for the AIDS transmitting crime.

(f) If a person is required by this Code section to submit to an HIV test and is thereby determined to be infected with HIV, that determination and the name of the person shall be reported to:

(1) The Department of Public Health, which shall disclose the name of the person as necessary to provide counseling to each victim of that person's AIDS transmitting crime if that crime is other than one specified in subparagraph (a)(3)(J) of Code Section 31-22-9.1 or to any parent or guardian of any such victim who is a minor or incompetent person;

(2) The court which ordered the HIV test, which court shall make that report a part of

that person's criminal record. That report shall be sealed by the court; and

(3) The officer in charge of any penal institution or other facility in which the person has been confined by order or sentence of the court for purposes of enabling that officer to confine the person separately from those not infected with HIV.

(g) For the purpose of subsection (b) of this Code section, "significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or body fluids of the person arrested for such offense, other than tears, saliva, or perspiration, of a magnitude that the Centers for Disease Control and Prevention have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

(h) The state may not use the fact that a medical procedure or test was performed on a person under this Code section or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense.

#### **O.C.G.A. §17-15-1**

##### **Legislative intent**

The General Assembly recognizes that many innocent persons suffer personal physical injury, serious mental or emotional trauma, severe financial hardship, or death as a result of criminal acts or attempted criminal acts. The General Assembly finds and determines that there is a need for assistance for such victims of crime. Accordingly, it is the General Assembly's intent that under certain circumstances aid, care, and assistance be provided by the state for such victims of crime.

**O.C.G.A. § 17-15-2**

**Definitions (Victims Compensation)**

As used in this chapter, the term:

- (1) "Board" means the Criminal Justice Coordinating Council.
- (2) "Claimant" means any person filing a claim pursuant to this chapter.
- (3) "Crime" means:

(A) An act which constitutes hit and run as defined in Code Section 40-6-270, homicide by vehicle as defined in Code Section 40-6-393, serious injury by vehicle as defined in Code Section 40-6-394, or any act which constitutes a violation of Code Section 16-5-46 or Chapter 6 or Part 2 of Article 3 of Chapter 12 of Title 16, a violation of Code Section 16-5-70, or a violent crime as defined by state or federal law which results in physical injury, serious mental or emotional trauma, or death to the victim and which is committed:

(i) In this state;

(ii) In a state which does not have a victims' compensation program, if the victim is a resident of this state; or

(iii) In a state which has compensated the victim in an amount less than the victim would be entitled to pursuant to this chapter, if the victim is a resident of this state;

(B) An act which constitutes international terrorism as defined in 18 U.S.C. Section 2331 which results in physical injury, serious mental or emotional trauma, or death to the victim, if the

victim is a resident of this state and is outside the territorial boundaries of the United States when such act is committed; or

(C) An act of mass violence which results in physical injury, serious mental or emotional trauma, or death to the victim, if the victim is a resident of this state and is outside the territorial boundaries of the United States when such act is committed.

(4) "Direct service provider" means a public or nonprofit entity which provides aid, care, and assistance to a victim.

(5) "Director" means the director of the Criminal Justice Coordinating Council.

(6) "Forensic medical examination" means an examination provided to a person pursuant to subsection (c) of Code Section 16-6-1 or subsection (c) of Code Section 16-6-2 by trained medical personnel in order to gather evidence. Such examination shall include, but shall not be limited to:

(A) An examination for physical trauma;

(B) A determination as to the nature and extent of the physical trauma;

(C) A patient interview;

(D) Collection and evaluation of the evidence collected; and

(E) Any additional testing deemed necessary by the examiner in order to collect evidence and provide treatment.

- (7) "Fund" means the Georgia Crime Victims Emergency Fund.
- (8) "Investigator" means an investigator of the board.
- (9) "Serious mental or emotional trauma" means a nonphysical injury which has been documented by a licensed mental health professional and which meets the specifications promulgated by the board's rules and regulations relating to this type of trauma.
- (10) "Victim" means a person who:

- (A) Is injured physically, who dies, or who suffers financial hardship as a result of being injured physically as a direct result of a crime;
- (B) Suffers a serious mental or emotional trauma as a result of being threatened with a crime which could result in physical injury or death;
- (C) Suffers a serious mental or emotional trauma as a result of being present during the commission of a crime; or
- (D) Suffers a serious mental or emotional trauma as a result of being trafficked for labor or sexual servitude as defined in Code Section 16-5-46.

#### **O.C.G.A. § 17-15-15**

##### **Responsibility for cost of forensic medical examination**

When a forensic medical examination is conducted, the cost of such examination shall be paid for by the fund in an amount not to exceed \$1,000.00. The fund shall be responsible for payment of such cost notwithstanding whether the person receiving such examination has health insurance or any other source of health care coverage.

#### **O.C.G.A. § 17-17-1**

##### **Declaration of policy (Crime Bill of Rights)**

The General Assembly hereby finds and declares it to be the policy of this state that victims of crimes should be accorded certain basic rights just as the accused are accorded certain basic rights. These rights include:

- (1) The right to reasonable, accurate, and timely notice of any scheduled court proceedings or any changes to such proceedings;
- (2) The right to reasonable, accurate, and timely notice of the arrest, release, or escape of the accused;
- (3) The right not to be excluded from any scheduled court proceedings, except as provided in this chapter or as otherwise required by law;
- (4) The right to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused;
- (5) The right to file a written objection in any parole proceedings involving the accused;
- (6) The right to confer with the prosecuting attorney in any criminal prosecution related to the victim;
- (7) The right to restitution as provided by law;
- (8) The right to proceedings free from unreasonable delay; and
- (9) The right to be treated fairly and with dignity by all criminal justice agencies involved in the case.

**O.C.G.A. § 17-17-11**

**Right of victim to express opinion on disposition of accused's case**

The prosecuting attorney shall offer the victim the opportunity to express the victim's opinion on the disposition of an accused's case, including the views of the victim regarding:

- (1) Plea or sentence negotiations; and
- (2) Participation in pretrial or post-conviction diversion programs.

This provision shall not limit any other right created pursuant to state law.

**O.C.G.A. § 17-17-12**

**Notification to victim of accused's motion for new trial or appeal, release on bail or recognizance, appellate proceedings, and outcome of appeal; notifications regarding death penalty cases; victim's rights retained at new trial or on appeal**

(a) Upon the written request of the victim, the prosecuting attorney shall notify the victim of the following:

- (1) That the accused has filed a motion for new trial, an appeal of his or her conviction, or an extraordinary motion for new trial;
- (2) Whether the accused has been released on bail or other recognizance pending the disposition of the motion or appeal;
- (3) The time and place of any appellate court proceedings relating to the motion or appeal and any changes in the time or place of those proceedings; and
- (4) The result of the motion or appeal.

(b) The Attorney General shall notify the prosecuting attorney of the filing of collateral attacks on convictions of this state which are being defended by the Attorney General.

(b.1) In cases in which the accused is convicted of a capital offense and receives the death penalty, the Attorney General shall:

- (1) Notify the prosecuting attorney and upon the written request of the victim notify the victim of the filing and disposition of all collateral attacks on such conviction which are being defended by the Attorney General, including, but not limited to, petitions for a writ of habeas corpus, and the time and place of any such proceedings and any changes in the time or place of those proceedings; and
- (2) Provide the prosecuting attorney and upon the written request of the victim provide the victim with a report on the status of all pending appeals, collateral attacks, and other litigation concerning such conviction which is being defended by the Attorney General at least every six months until the accused dies or the sentence or conviction is overturned or commuted or otherwise reduced to a sentence other than the death penalty.

(c) In the event the accused is granted a new trial or the conviction is reversed or remanded and the case is returned to the trial court for further proceedings, the victim shall be entitled to request the rights and privileges provided by this chapter.

**O.C.G.A. § 19-7-5**

**Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report**

(a) The purpose of this Code section is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

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

(1) (For effective date, see note.) "Abortion" shall have the same meaning as set forth in Code Section 15-11-681.

(2) "Abused" means subjected to child abuse.

(3) "Child" means any person under 18 years of age.

(4) "Child abuse" means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Sexual abuse of a child; or

(D) Sexual exploitation of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an "abused" child.

(5) "Child service organization personnel" means persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children.

(6) "Clergy" means ministers, priests, rabbis, imams, or similar functionaries, by whatever name called, of a bona fide religious organization.

(7) "Pregnancy resource center" means an organization or facility that:

(A) Provides pregnancy counseling or information as its primary purpose, either for a fee or as a free service;

(B) Does not provide or refer for abortions;

(C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

(D) Is not licensed or certified by the state or federal government to provide medical or health care services and is not otherwise bound to follow federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws relating to patient confidentiality.

(8) "Reproductive health care facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, or gynecological care and services.

(9) "School" means any public or private pre-kindergarten, elementary school, secondary school, technical school, vocational school, college, university, or institution of postsecondary education.

(10) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (B) Bestiality;
- (C) Masturbation;
- (D) Lewd exhibition of the genitals or pubic area of any person;
- (E) Flagellation or torture by or upon a person who is nude;
- (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
- (H) Defecation or urination for the purpose of sexual stimulation; or
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

"Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

- (11) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires that child to engage in:
- (A) Prostitution, as defined in Code Section 16-6-9; or
  - (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

(c)(1) The following persons having reasonable cause to believe that a child has been abused shall report or cause reports of that abuse to be made as provided in this Code section:

- (A) Physicians licensed to practice medicine, physician assistants, interns, or residents;
- (B) Hospital or medical personnel;
- (C) Dentist;
- (D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43

- (E) Podiatrists;
- (F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 26 of Title 43 or nurse's aides;
- (G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43;
- (H) School teachers;
- (I) School administrators;
- (J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;
- (K) Child welfare agency personnel, as that agency is defined pursuant to Code Section 49-5-12;
- (L) Child-counseling personnel;
- (M) Child service organization personnel;
- (N) Law enforcement personnel; or
- (O) Reproductive health care facility or pregnancy resource center personnel and volunteers.

(2) If a person is required to report child abuse pursuant to this subsection because that person attends to a child pursuant to such person's duties as an employee of or volunteer at a hospital, school, social agency, or similar facility, that person shall notify the person in charge of the facility, or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section. An employee or volunteer who makes a report to the person designated pursuant to this paragraph shall be deemed to have fully complied with this subsection. Under no circumstances shall any person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, to whom such notification has been made exercise any control, restraint, modification, or make other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

(d) Any other person, other than one specified in subsection (c) of this Code section, who has reasonable cause to believe that a child is abused may report or cause reports to be made as provided in this Code section.

(e) An oral report shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused, by telephone or otherwise and followed by a report in writing, if requested, to a child welfare agency providing protective services, as designated by the Department of Human Services, or, in the absence of such agency, to an appropriate police authority or district attorney. If a report of child abuse is made to the child welfare agency or independently discovered by the agency, and the agency has reasonable cause to believe such report is true or the report contains any allegation or evidence of child abuse, then the agency shall immediately notify the appropriate police authority or district attorney. Such reports shall contain the names and addresses of the child and the child's parents or caretakers, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator. Photographs of the child's injuries to be used as documentation in support of



allegations by hospital employees or volunteers, physicians, law enforcement personnel, school officials, or employees or volunteers of legally mandated public or private child protective agencies may be taken without the permission of the child's parent or guardian. Such photographs shall be made available as soon as possible to the chief welfare agency providing protective services and to the appropriate police authority.

(f) Any person or persons, partnership, firm, corporation, association, hospital, or other entity participating in the making of a report or causing a report to be made to a child welfare agency providing protective services or to an appropriate police authority pursuant to this Code section or any other law or participating in any judicial proceeding or any other proceeding resulting there from shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided such participation pursuant to this Code section or any other law is made in good faith. Any person making a report, whether required by this Code section or not, shall be immune from liability as provided in this subsection.

(g) Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about child abuse from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of child abuse from the confession of the perpetrator.

(h) Any person or official required by subsection (c) of this Code section to report a suspected case of child abuse who knowingly and willfully fails to do so shall be guilty of a misdemeanor.

(i) A report of child abuse or information relating thereto and contained in such report, when provided to a law enforcement agency or district attorney pursuant to subsection (e) of this Code section or pursuant to Code Section 49-5-41, shall not be subject to public inspection under Article 4 of Chapter 18 of Title 50 even though such report or information is contained in or part of closed records compiled for law enforcement or prosecution purposes unless:

(1) There is a criminal or civil court proceeding which has been initiated based in whole or in part upon the facts regarding abuse which are alleged in the child abuse reports and the person or entity seeking to inspect such records provides clear and convincing evidence of such proceeding; or

(2) The superior court in the county in which is located the office of the law enforcement agency or district attorney which compiled the records containing such reports, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this paragraph. When those records are located in more than one county, the application may be made to the superior court of any one of such counties. A copy of any

application authorized by this paragraph shall be served on the office of the law enforcement agency or district attorney which compiled the records containing such reports. In cases where the location of the records is unknown to the applicant, the application may be made to the Superior Court of Fulton County. The superior court to which an application is made shall not grant the application unless:

- (A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;
- (B) The applicant carries the burden of showing the legitimacy of the research project; and
- (C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

O.C.G.A. §30-5-4

Reporting of need for protective services; manner and contents of report; immunity from civil or criminal liability; privileged communications

(a) (1) (A) The following persons having reasonable cause to believe that a disabled adult or elder person has been the victim of abuse, other than by accidental means, or has been neglected or exploited shall report or cause reports to be made in accordance with the provisions of this Code section:

- (i) Any person required to report child abuse as provided in subsection (c) of Code Section 19-7-5;
- (ii) Physical therapists;
- (iii) Occupational therapists;
- (iv) Day-care personnel;
- (v) Coroners;
- (vi) Medical examiners;
- (vii) Emergency medical services personnel, as such term is defined in Code Section 31-11-49;
- (viii) Any person who has been certified as an emergency medical technician, cardiac technician, paramedic, or first responder pursuant to Chapter 11 of Title 31;
- (ix) Employees of a public or private agency engaged in professional health related services to elder persons or disabled adults; and
- (x) Clergy members.

(B) Any employee of a financial institution, as defined in Code Section 7-1-4, having reasonable cause to believe that a disabled adult or elder person has been exploited shall report or cause reports to be made in accordance with the provisions of this Code section; provided, however, that this obligation shall not apply to any employee of a financial institution while that employee is acting as a fiduciary, as defined in Code Section 7-1-4, but only for such assets that the employee is holding or managing in a fiduciary capacity.

(C) When the person having a reasonable cause to believe that a disabled adult or elder person is in need of protective services performs services as a member of the staff of a hospital, social agency, financial institution, or similar facility, such person shall notify the person in charge of the facility and such person or that person's designee shall report or cause reports to be made in accordance with the provisions of this Code section.

(2) Any other person having a reasonable cause to believe that a disabled adult or elder person is in need of protective services or has been the victim of abuse, neglect, or exploitation may report such information as provided in this Code section.

(b) (I) A report that a disabled adult or elder person who is not a resident of a long-term care facility as defined in Code Section 31-8-81 is in need of protective services or has been the victim of abuse, neglect, or exploitation shall be made to an adult protection agency providing protective services as designated by the department and to an appropriate law enforcement agency or prosecuting attorney. If a report of a disabled adult or elder person abuse, neglect, or exploitation is made to an adult protection agency or independently discovered by the agency, then the agency shall immediately notify the appropriate law enforcement agency or prosecuting attorney. If the disabled adult or elder person is a resident of a long-term care facility as defined in Code Section 31-8-81, a report shall be made in accordance with Article 4 of Chapter 8 of Title 31. If a report made in accordance with the provisions of this Code section alleges that the abuse or exploitation occurred within a long-term care facility, such report shall be investigated in accordance with Articles 3 and 4 of Chapter 8 of Title 31.

(2) The report may be made by oral or written communication. The report shall include the name and address of the disabled adult or elder person and should include the name and address of the disabled adult's or elder person's caretaker, the age of the disabled adult or elder person, the nature and extent of the disabled adult's or elder person's injury or condition resulting from abuse, exploitation, or neglect, and other pertinent information. All such reports prepared by a law enforcement agency shall be forwarded to the director within 24 hours.

(c) Anyone who makes a report pursuant to this chapter, who testifies in any judicial proceeding arising from the report, who provides protective services, or who participates in a required investigation under the provisions of this chapter shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith, with a malicious purpose, or was a party to such crime or fraud. Any financial institution, as defined in Code Section 7-1-4, including without limitation officers and directors thereof, that is an employer of anyone who makes a report pursuant to this chapter in his or her capacity as an employee, or who testifies in any judicial proceeding arising from a report made in his or her capacity as an employee, or who participates in a required investigation under the provisions of this chapter in his or her capacity as an employee, shall be immune from any civil or criminal liability on account of such report or testimony or participation of its employee, unless such financial institution knew or should have known that the employee acted in bad faith or with a malicious purpose and failed to take reasonable and available measures to prevent such employee from acting in bad faith or with a malicious purpose. The immunity described in this subsection shall apply not only with respect to the acts of making a report, testifying in a judicial proceeding arising from a report, providing protective services, or participating in a required investigation but also shall apply with respect to the content of the information communicated in such acts.

(d) Any suspected abuse, neglect, exploitation, or need for protective services which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse, neglect, exploitation, or need for protective services has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report such matters confided to him or her solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about abuse, neglect, exploitation, or the need for protective services from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of such matters from the confession of the perpetrator.

**O.C.G.A. § 31-7-9**

**Reports by physicians and other personnel of non-accidental injuries to patients; immunity from liability**

(a) As used in this Code section, the term "medical facility" includes, without being limited to, an ambulatory surgical treatment center defined in subparagraph (C) of paragraph (4) of Code Section 31-7-1 and a freestanding imaging center defined in subparagraph (G) of paragraph (4) of Code Section 31-7-1.

(b) Any:

- (1) Physician, including any doctor of medicine licensed to practice under the laws of this state;
- (2) Licensed registered nurse employed by a medical facility;
- (3) Security personnel employed by a medical facility; or
- (4) Other personnel employed by a medical facility whose employment duties involve the care and treatment of patients therein having cause to believe that a patient has had physical injury or injuries inflicted upon him other than by accidental means shall report or cause reports to be made in accordance with this Code section.

(c) An oral report shall be made immediately by telephone or otherwise and shall be followed by a report in writing, if requested, to the person in charge of the medical facility or his designated delegate. The person in charge of the medical facility or his designated delegate shall then notify the local law enforcement agency having primary jurisdiction in the area in which the medical facility is located of the contents of the report. The report shall contain the name and address of the patient, the nature and extent of the patient's injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

(d) Any person or persons participating in the making of a report or causing a report to be made to the appropriate police authority pursuant to this Code section or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil liability that might otherwise be incurred or imposed, providing such participation pursuant to this Code section shall be in good faith.

**O.C.G.A. §31-8-80**

**Short title**

This article shall be known as the "Long-term Care Facility Resident Abuse Reporting Act."

**O.C.G.A. § 31-9-2**

**Persons authorized to consent to surgical or medical treatment**

(a) In addition to such other persons as may be authorized and empowered, any one of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed, or directed by a duly licensed physician:

(1) Any adult, for himself or herself, whether by living will, advance directive for health care, or otherwise;

(1.1) Any person authorized to give such consent for the adult under an advance directive for health care or durable power of attorney for health care under Chapter 32 of this title;

(2) In the absence or unavailability of a person authorized pursuant to paragraph (1.1) of this subsection, any married person for his or her spouse;

(3) In the absence or unavailability of a living spouse, any parent, whether an adult or a minor, for his or her minor child;

(4) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his or her care; and any guardian, for his or her ward;

(5) Any female, regardless of age or marital status, for herself when given in connection with pregnancy, or the prevention thereof, or childbirth;

(6) Upon the inability of any adult to consent for himself or herself and in the absence of any person to consent under paragraphs (1.1) through (5) of this subsection, the following persons in the following order of priority:

(A) Any adult child for his or her parents;

(B) Any parent for his or her adult child;

(C) Any adult for his or her brother or sister;

(D) Any grandparent for his or her grandchild;

(E) Any adult grandchild for his or her grandparent; or

(F) Any adult niece, nephew, aunt, or uncle of the patient who is related to the patient in the first degree; or

(7) Upon the inability of any adult to consent for himself or herself and in the absence of any person to consent under paragraphs (1.1) through (6) of this subsection, an adult friend of the patient. For purposes of this paragraph, "adult friend" means an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient's health care views and desires, and who is willing and able to become involved in the patient's health care

decisions and to act in the patient's best interest. The adult friend shall sign and date an acknowledgment form provided by the hospital or other health care facility in which the patient is located for placement in the patient's records certifying that he or she meets such criteria.

(a.1) In the absence, after reasonable inquiry, of any person authorized in subsection (a) of this Code section to consent for the patient, a hospital or other health care facility or any interested person may initiate proceedings for expedited judicial intervention to appoint a temporary medical consent guardian pursuant to Code Section 29-4-18.

(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to surgical or medical treatment or procedures which the patient would have wanted had the patient understood the circumstances under which such treatment or procedures are provided. The person who consents on behalf of the patient in accordance with subsection (a) of this Code section shall have the right to visit the patient in accordance with the hospital or health care facility's visitation policy.

(c) For purposes of this Code section, the term "inability of any adult to consent for himself or herself" means a determination in the medical record by a licensed physician after the physician has personally examined the adult that the adult "lacks sufficient understanding or capacity to make significant responsible decisions" regarding his or her medical treatment or the ability to communicate by any means such decisions.

(d) (1) No hospital or other health care facility, health care provider, or other person or entity shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for relying in good faith on any direction or decision by any person reasonably believed to be authorized and empowered to consent under subsection (a) of this Code section even if death or injury to the patient ensues. Each hospital or other health care facility, health care provider, and any other person or entity who acts in good faith reliance on any such direction or decision shall be protected and released to the same extent as though such person had interacted directly with the patient as a fully competent person.

(2) No person authorized and empowered to consent under subsection (a) of this Code section who, in good faith, acts with due care for the benefit of the patient, or who fails to act, shall be subject to civil or criminal liability for such action or inaction.

O.C.G.A. § 31-9-7

Right of persons who are at least 18 years of age to refuse to consent to treatment

Nothing contained in this chapter shall be construed to abridge any right of a person 18 years of age or over to refuse to consent to medical and surgical treatment as to his own person.

**O.C.G.A. §31-17-7**

**Consent of minor to medical or surgical care or services; informing spouse, parent, custodian, or guardian**

(a) The consent to the provision of medical or surgical care or services by a hospital or public clinic or to the performance of medical or surgical care or services by a physician licensed to practice medicine and surgery, when such consent is given by a minor who is or professes to be afflicted with a venereal disease, shall be as valid and binding as if the minor had achieved his majority, provided that any such treatment shall involve procedures and therapy related to conditions or illnesses arising out of the venereal disease which gave rise to the consent authorized under this Code section. Any such consent shall not be subject to later disaffirmation by reason of minority. The consent of no other person or persons, including but not limited to a spouse, parent, custodian, or guardian, shall be necessary in order to authorize the provision to such minor of such medical or surgical care or services as are described in this subsection.

(b) Upon the advice and direction of a treating physician or, if more than one, of any one of them, a member of the medical staff of a hospital or public clinic or a physician licensed to practice medicine and surgery may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor as to the treatment given or needed. Such information may be given to or withheld from the spouse, parent, custodian, or guardian without the consent of the minor patient and even over the express refusal of the minor patient to the providing of such information.

**§ 35-1-2. Examination of sexual assault victims; reports**

Universal Citation: GA1Wdi U§.1 2 (2016)

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

(1) "Division" means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(2) "Medical examination" means an examination pursuant to subsection (c) of Code Section 16-6-1 or subsection (c) of Code Section 16-6-2.

(b) When a forensic medical examination is performed, evidence is collected, and the alleged victim has requested that law enforcement officials be notified, the individual performing such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence and provide a summary of all rights guaranteed to the alleged victim pursuant to the Crime Victims' Bill of Rights established pursuant to Code Section 17-17-1, et seq., as provided by the Criminal Justice Coordinating Council. At the time of the examination, no alleged victim shall be required to assign or waive any rights afforded to them in the Crime Victims' Bill of Rights or that might prevent the alleged victim from seeking relief from the Crime Victims Compensation Board. Law enforcement officials shall take possession of such evidence no later than 96 hours of being notified.

(c) It shall be the duty of every law enforcement officer who takes possession of the evidence as provided in subsection (b) of this Code section to ensure that such evidence is submitted to the division within 30 days of it being collected, in accordance with the procedures established by the division.

(d) When a forensic medical examination was performed before July 1, 2016, evidence was collected, and the alleged victim requested that law enforcement officials be notified, the individual who performed such exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of such evidence on or before July 15, 2016, and law enforcement officials shall take possession of such evidence on or before July 31, 2016. It shall be the duty of every law enforcement officer who takes possession of the evidence as provided in this Code section to ensure that such evidence is submitted to the division by August 31, 2016, in accordance with the procedures established by the division.

(e) It shall be the duty of every law enforcement agency to create a list of evidence resulting from a forensic medical examination that is in such agency's possession on August 1, 2016, identifying such evidence as needing to be tested and submitting such listing of information to the division by August 15, 2016.

(f) A failure to comply with the provisions of this Code section shall not affect the admissibility of evidence collected from a forensic medical examination.

(g) Beginning December 1, 2016, the division shall issue an annual report detailing the number of cases for which it has tested evidence pursuant to this Code section and the number of cases that are awaiting testing. Such report shall be provided to the executive counsel of the Governor, the Speaker of the House of Representatives, the Lieutenant Governor, the members of the House Committee on Judiciary, Non-civil, the members of the Senate Judiciary, Non-civil Committee, the House Committee on Health and Human Services, and the Senate Health and Human Services Committee and posted online at the Georgia Bureau of Investigation's website.