

# Northeastern Judicial Circuit 2025 Sexual Assault Protocol

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# Chapter 1

## Introduction

### I. PURPOSE OF THE PROTOCOL

This document is an updated protocol from 2024 and was compiled at the behest of Jason Deal, Chief Judge Superior Court, Northeastern 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.

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 secondary victimization 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 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; and
- Develop a coordinated effort among allied professionals to ensure that victims receive efficient and comprehensive medical care, evidentiary examination, emotional support and referral information.

### II. PERSONS COVERED

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 both adult and child victims of sexual assault. When a child has been sexually abused, existing county or jurisdictional child abuse protocols shall be referenced in determining the role of the Division of Family and Children's Services, law enforcement, and the courts. **O.C.G.A. §§ 19-15-1, 2, 5 and 6 (as amended)** define the establishment of county child abuse protocols.

### **III. 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 severe 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.

Victim confidentiality should be protected to the highest degree possible, balancing the need to successfully prosecute perpetrators. 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, employers, 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.

### **IV. PROSECUTION OF CASES**

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

The admissibility of evidence is governed by Georgia statutory and case law exclusively. Any failure by any participant in the protocol to follow the sexual assault protocol shall not preclude the admissibility of evidence.

## V. 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).** There are two other laws designed to protect elderly persons who may be victims. **O.C.G.A. §§ 30-5-4 (as amended) and 31-8-82 (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.

**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.

## VI. 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 **O.C.G.A. § 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.

"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

### **(3) 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 minor to medical or surgical care or services; informing spouse, parent, custodian, or guardian: **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)**

## **VII. 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 Victim Compensation?**

Crime Victim 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

## 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 Victims' Compensation Program (as victim qualifications apply). 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. Many of these programs provide training to allied professionals including but not limited to public health, medical, law enforcement, legal and mental health professionals on the impact of trauma, physical and emotional reactions and the range of needs of sexual assault victims. 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 Victims' Compensation Program.

**(3) A Crisis Center or other agencies** that have a 24-hour crisis hotline and are primarily crisis intervention services that may also provide 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 specific junctures in the case, many victim service agencies help victims from "start to finish."

#### 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, 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 (SA) Center.
- Provide information to the victim regarding the importance of preserving evidence.
- Provide emotional support and crisis intervention to the victim and his/her families.
- Be present during medical exams and law enforcement 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, SA advocates should not go to the crime scene unless requested by law enforcement. SA Victim advocates are not investigators or attorneys and do not investigate cases or give legal advice. The role of the SA 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. \*If Law Enforcement (LE) has their own LE Victim Advocates, they are encouraged to be on-scene to provide LE support.

## 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 an application process has been initiated by another agency;
- Notifying victims of all available services such as support groups, crisis intervention, advocacy, counseling and 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; and
- Dealing with any problems encountered during the aftermath of the crime.

#### **O.C.G.A. § 24-5-509 (as amended)**

An agent is not compelled to disclose any privileged communication between sexual assault victim and agent in a judicial proceeding unless the victim waives the privilege or the court finds that the evidence is admissible by a preponderance of the evidence.

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)**

Georgia Code concerning AIDS transmitting crimes. The victim, or parent or legal guardian of a minor or incompetent victim, may request of the prosecuting agency that the person arrested for a pending offense submit to a HIV test and consent to the release of the test results to the victim. If the person arrested declines, then a Judge of the Superior Court where the charge is pending, upon a showing of probable cause that the person arrested committed the alleged crime and there was a significant exposure, may order the test to be performed and has the discretion to assign financial responsibility of the testing between the victim or the arrested person. If the person is convicted of any HIV transmitting crime, the Court shall require the Defendant to submit to HIV testing within 45 days of the plea or guilty verdict.

#### **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

## Chapter 3

### Law Enforcement Response

#### I. RESPONDING TO VICTIMS: THE ROLE OF LAW ENFORCEMENT

Investigators should remain sensitive to the individuality of each victim and the trauma that a victim and the victim's family and friend's experience. 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 protocol was developed to maximize the probability across the state of Georgia of providing consistent, appropriate, and sensitive treatment to victims, and to successfully prosecute the perpetrators of sexual assault. 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 sometimes 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 calls 911, 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 requested by the responding officer, dispatch should notify the Forensic Medical Examiner (FME) 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; and
- If it is immediately apparent to the dispatcher that the victim is unable to discuss the assault, then the dispatcher should simply seek to have the victim remain 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," 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. 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 forensic medical examination.
3. The officer should 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.
4. Upon survivor's request, 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 forensic medical examination. However, in some medical facilities the local sexual assault center will provide the necessary clothing.
5. The officer should arrange for the transportation of the victim to the appropriate medical facility. If necessary, an officer should transport the victim to the medical facility. If practical and without undue delay an unmarked vehicle should be used to transport the victim.
6. 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 victim should still be transported to the appropriate medical facility.
7. The responding officer, if time permits, may also ask the victim some questions about the sexual assault, including:
  - Name or physical description of assailant;
  - Unusual physical characteristics of assailant;
  - Clothing of assailant;
  - Method of flight (car, truck, on foot, etc.); and

- Direction of flight.
8. 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 forensic medical examination.
  9. If the responding officer proceeds to the medical facility where the victim is taken, the officer should:
    - Remain at the medical facility until law enforcement detectives or investigators have arrived; and
    - 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 (except to secure for safety), 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 name of every person, law enforcement 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, the clothing of the victim, and any damage to the victim's clothing or personal possessions;
4. A careful description of the victim's visible affect/expression;
5. Actions taken on behalf of the victim;
6. Actions taken to preserve the crime scene; and
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 clothing description and any additional information such as scars, marks, tattoos and any other identifiable 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 law enforcement;
  - 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; and
  - n) The exact time the officer left the crime scene and, if applicable, the medical facility.

#### **IV. THE MEDICAL EXAMINATION AND LAW ENFORCEMENT**

The sexual assault center provides trained advocates to support victims during the forensic medical examination. Typically, law enforcement officers should not be present during the forensic medical examination of the sexual assault victim.

If the victim has requested that law enforcement be notified, the individual performing the forensic medical exam, or his or her designee, shall notify the appropriate law enforcement agency of the collection of evidence. Law enforcement officials should take possession of the evidence collected during the examination within 96 hours of being notified.

##### **O.C.G.A. § 35-1-2(b) (as amended)**

Forementioned evidence should be submitted to the Division of Forensic Sciences of the Georgia Bureau of Investigation within 30 days of being collected by law enforcement.

##### **O.C.G.A. § 35-1-2(c) (as amended)**

## **V. THE INVESTIGATOR'S ROLE IN SEXUAL ASSAULT CASE**

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 Investigator's 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 and when appropriate/available, contact a Victim Advocate.
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 discreetly.
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 audiotape 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 law enforcement 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; and
  - 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 based on lawful cause;
  - 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 law enforcement traffic in reference to the case are preserved by the communications department for later use; and
  - 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 law enforcement 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 ensure 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) Accommodation should be made if the victim requests the presence of a victim advocate, relative or friend or needs an interpreter.
- b) 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; and
  - Permit the presence of other persons, such as victim advocates, to be present at the interview.

### **2. The Interview**

- a) 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.

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.

- b) 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 assault;
  - The assailant's clothing;
  - The assailant's appearance including marks, scars, tattoos, deformities, or unusual

- physical features or body odors;
- The assailant's means of restraining the victim (if any);
- 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; and
- 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 investigator 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. Referring the victim to prosecutors and victim advocacy agencies to familiarize the victim with court practices and procedures.
3. As needed, informing the victim of future investigative and prosecutorial activities on the case, including those which might require the victim's involvement.
4. As needed, maintaining contact with the victim to ensure that appropriate support services are available.

### **C. 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

# Medical: Sexual Assault Examination Evidence Collection

## **Chapter 4**

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

#### **I. ADULTS & ADOLESCENTS**

Sexual Assault Examination and Evidence Collection, which follows this narrative, is intended to be used as a guide for examining and treating adult and adolescent 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 forensic medical examination and collect the forensic evidence. Collection of physical evidence more than 120 hours after a sexual assault must be guided by the particulars of individual case histories.

#### **II. THE MEDICAL EXAMINATION**

Trained forensic medical examiners are committed to providing culturally sensitive, developmentally appropriate and trauma informed care to optimize the acute and long-term health outcomes of all clients served. Examiners are responsible for collaborating with law enforcement, advocates, and other healthcare professionals to ensure timely delivery of forensic medical services to adult/adolescent reporting and non-reporting patients.

Acute forensic medical examinations shall be performed at Bridging Hope (Formerly Rape Response). Acute cases are as follows: vaginal assault within 120 hours; anal assault 72 hours; oral assault 24 hours and saliva on skin within 96 hours of the reported sexual assault. Any case that presents outside the time frame of 120 hours requires a medical consultation with the on-call examiner or the Bridging Hope (Formerly Rape Response) Forensic Nursing Program Director or Manager to determine the next appropriate steps which may still involve evidence collection through a forensic medical exam. Forensic medical exams should be made available if a patient chooses to report or chooses not to report.

Forensic medical examinations shall only be performed by a healthcare provider trained in conducting such exams.

Medical forensic responsibilities include:

- Obtaining informed consent from the patient for the examination, documentation, and evidence collection
- Gathering the medical and forensic history
- Conducting a physical examination
- Coordinating treatment of injuries
- Documentation of biologic and physical findings
- Collection of evidence from the patient
- Documentation of findings
- Providing information, treatment, and referrals for STIs, pregnancy
- Follow-up as needed for additional treatment and/or collection of evidence.
- Providing testimony at trial

## **BIOLOGIC EVIDENCE COLLECTION**

The examiner will collect biologic samples at the request of a patient, in accordance with currently accepted protocol (defined as the *National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents*), to obtain timely biologic reference samples for possible analysis at the GBI Crime Lab. At the conclusion of the sexual assault medical forensic examination, any evidence collected will be packaged and protected in a manner to ensure the integrity of specimens and the appropriate chain of custody of the evidence.

All biologic samples, fluids, hairs and other evidence requiring GBI analysis will be given directly to the case investigator for processing, using a proper chain of evidence.

Pursuant to SB 304/O.C.G.A. § 35-1-2(b) (as amended), it shall be the duty of every law enforcement officer who takes possession of the evidence collected during a sexual assault forensic medical examination to ensure that such evidence is submitted to the division within 30 days of it being collected.

Drug facilitated sexual assault (DFSA) occurs when a victim is subjected to or made to perform sexual acts while they are incapacitated or unconscious due to the effect(s) of drugs and/or other substance that compromise their ability to consent to such acts. It is important for the examiner to recognize that the patient may have ingested the suspected or reported substance(s) voluntarily.

If possible, a urine sample of 100 milliliters should be collected if collection occurs less than 120 hours since the suspected or known ingestion. Urine may be stored in a secured refrigerator for up to 72 hours and then frozen if long-term storage is required. Although most drugs will be undetectable in the blood beyond 24 hours after ingestion, blood may prove useful in cases where the patient is examined within 24 hours of the known or suspected ingestion. At least 12 milliliters of blood should be obtained in the grey-topped tubes provided in the DFSA kit. Blood samples should never be frozen during temporary or long-term evidence storage.

All biologic evidence collected at the request of a patient who chooses not to initiate and participate in and/or cooperate with a law enforcement investigation shall be maintained by Bridging Hope (Formerly Rape Response).

## **REQUESTS FOR MEDICAL FORENSIC EXAMINATION**

With the consent of the patient, medical forensic examinations can be performed at the request of (1) a law enforcement agency, (2) the District Attorney's Office, (3) a hospital, (4) pursuant to a court order, or (5) at the patient's request pursuant to O.C.G.A. § 17-5-72.

Medical forensic examinations may be requested 24 hours a day by calling Bridging Hope (Formerly Rape Response) at 770-503-7273.

## **COSTS OF THE MEDICAL FORENSIC EXAMINATIONS**

The cost of examinations shall be paid pursuant to O.C.G.A § 16-6-1(c), O.C.G.A § 17-5-72. Patients shall not be responsible for the payment of medical forensic examination costs.

## **CONDUCT OF THE MEDICAL FORENSIC EXAMINATION**

A registered nurse, physician, nurse practitioner or PA with specialized training in conducting forensic medical examinations will perform the examination and assessment.

Forensic medical examinations and biologic evidence collection should be completed as quickly as possible after a report is received.

Forensic medical examinations and biologic evidence collection shall be conducted in accordance with Georgia Bureau of Investigation (GBI) procedures using a GBI Sexual Assault Evidence Kit.

The forensic medical examiner will complete appropriate authorizations relating to the examination.

The forensic medical examiner will photograph and document injuries and prepare a report.

The forensic medical examiner will maintain and document the chain of custody of any evidence collected during the examination and assessment.

The forensic medical examiner will adhere to best practices as outlined in the *Georgia Sexual Assault Response Team Guide*.

## **PROCEDURES FOR HOSPITALS RECEIVING WALK-IN REPORTS OF SEXUAL ASSAULTS**

Hospitals receiving patients reporting incidents of sexual assault shall immediately contact law enforcement in accordance with O.C.G.A § 31-7-9 mandating all non-accidental injuries be reported. Patients will retain the right not to initiate, participate in, and/or cooperate with any law enforcement investigation of such assault. Law enforcement shall provide timely notification of the incident to the Bridging Hope (Formerly Rape Response) on-call examiner. The investigating officer is responsible for determining exam eligibility and initiating the SANE on-call.

## Chapter 5

### Prosecution

## Chapter 5 Prosecution

### I. VICTIM EXPECTATION AND THE ROLE OF THE PROSECUTOR

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 as the relationship between the prosecutor's office and the victim should be cultivated. The following recommendations are made in an attempt to address these concerns. While 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.

### 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. The Victims' Bill of Rights defines a victim as a person against whom a crime has been perpetrated or has allegedly been perpetrated; or a parent, guardian, or custodian of a crime victim who is a minor or a legally incapacitated person except if such parent, guardian, or custodian is in custody for an offense or is the defendant. The prosecution will notify the victim in compliance with the Victims' Bill of Rights as required by law, but also will use its discretion in notifying other parties that may be acting in the interests of the child, including the minor himself or herself. The prosecutor's responsibility to victims includes the following specific statutory requirements:
- B. Upon initial contact with a victim, a prosecuting attorney or designee 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; and
  - 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. § 17-17-8(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.
- C. Whenever possible, the prosecuting attorney's office shall notify the victim prior to any proceeding in which the release of the accused will be considered. **O.C.G.A. § 17-17-7(c) (as amended)**
- D. Whenever possible, the prosecuting attorney's office shall offer the victim the opportunity to express an opinion on the release of the accused pending judicial proceedings. **O.C.G.A. § 17-17-7(d) (as amended)**
- E. 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's office shall notify all victims of the requirement to make such requests in writing. **O.C.G.A. § 17-17-5(b) (as amended)**

- F.** The prosecuting attorney's office 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)**
- G.** Upon the written request of the victim, the prosecuting attorney's office 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)**; and
  - 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(c) (as amended)**.
- H.** Procedures compatible with a particular jurisdiction should be established by each prosecutor to ensure that the above statutory requirements are satisfied.
- I.** 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.
- J.** 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.
- K.** Prosecutors' offices should establish and maintain direct liaison with victims and victim service agencies.
- L.** Prosecutors are encouraged to discuss and disclose fully to victims when a decision is made not to prosecute and what those reasons are, regardless of the situation.

### **III. 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 a gun or other weapon;
- Defendant's prior criminal history;
- Status of defendant's arrest;
- Victim cooperation; and
- All available 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;
- Determine whether or not the victim has received the statutorily required notices and information; and
- Refer the victim to those agencies which may be operating in the community to assist victims.

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; and
- Any and all photographic evidence gathered at the scene or subsequently obtained.

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. Trial**

### **General Considerations**

It is the responsibility of the prosecutor to prepare for trial, to help the victim be prepared and understand the court process, and to help temper the victim's expectations regarding what may or may not happen.

# Appendix

## Laws Cited In the Sexual Assault Protocol

## **Appendix: 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 sheriffs 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.

(f) 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.

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

#### **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) In cases in which the victim reports an alleged sexual assault to law enforcement, 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 30 years from the date of arrest, or seven years from completion of sentence, whichever occurs last, and if no arrests, then for 50 years.
- (b) If the victim chooses not to report the alleged sexual assault to law enforcement at the time of evidence collection, the law enforcement agency with jurisdiction shall maintain any physical evidence collected as a result of such alleged sexual assault that contains biological material, including, but not limited to, stains, fluids, or hair samples that relate to the identity of the perpetrator of the alleged sexual assault, for not less than 12 months from the date any such physical evidence is collected.

## **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 (f) 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.

(d) Any person required under this Code section to submit to the HIV test who fails or refuses to submit to the test 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.

(e) 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.



(f) 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.

(g) 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 crimes. 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 crimes.

### **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 is committed in this state; in a state which does not have a victims' compensation program, if the claimant is a resident of this state; or in a state which has compensated the claimant in an amount less than the claimant would be entitled to pursuant to this chapter, if the claimant is a resident of this state, and which constitutes:

(i) Hit and run in violation of Code Section 40-6-270;

(ii) Homicide by vehicle in violation of Code Section 40-6-393;

(iii) Serious injury by vehicle in violation of Code Section 40-6-394;

(iv) A violation of Code Section 16-5-46;

(v) A violation of Chapter 6 of Title 16;

(vi) A violation of Part 2 of Article 3 of Chapter 12 of Title 16;

(vii) A violation of Code Section 16-5-70;

(viii) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;

(ix) An offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

(x) Any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense;

(B) An act which constitutes international terrorism as defined in 18 U.S.C. Section 2331 against a resident of this state when such resident was outside the territorial boundaries of the United States when such act was committed; or

(C) An act of mass violence involving a resident of this state when such resident was outside the territorial boundaries of the United States when such act was committed.

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

(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.

**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 forensic medical 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 forensic medical 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. § 17-17-7(c)(d)**

**Notification to victim of accused's arrest and proceedings where accused's release is considered; victim's right to express opinion in pending proceedings and to file written complaint in event of release**

- (c) Whenever possible, the prosecuting attorney shall notify the victim prior to any proceeding in which the release of the accused will be considered.
- (d) Whenever possible, the prosecuting attorney shall offer the victim the opportunity to express the victim's opinion on the release of the accused pending judicial proceedings.

**O.C.G.A. § 17-17-8(a)(b)**

**Notification by prosecuting attorney of legal procedures and of victim's rights in relation thereto; victims seeking restitution**

(a) Upon initial contact with a victim, a prosecuting attorney shall give prompt notification to the victim of the following:

- (1) The procedural steps in processing a criminal case including the right to restitution;
- (2) The rights and procedures of victims under this chapter;
- (3) Suggested procedures if the victim is subjected to threats or intimidation;
- (4) The names and telephone numbers of contact persons at both the office of the custodial authority and in the prosecuting attorney's office; and
- (5) The names and telephone numbers of contact persons at the office of the investigating agency where the victim may make application for the return of any of the victim's property that was taken during the course of the investigation, as provided by Code Section 17-5-50.

(b) 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, restitution hearings, appellate review, and post-conviction relief. The prosecuting attorney shall notify all victims of the requirement to make such request in writing.

**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; spiritual treatment for illnesses.**

(a) The purpose of this Code section is to provide for the protection of children. It is intended that mandatory reporting will cause the protective services of the state to be brought to bear on the situation in an effort to prevent abuses, to protect and enhance the welfare of 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) "Abandonment" means any conduct on the part of a parent, guardian, or legal custodian showing an intent to forgo parental duties or relinquish parental claims. Intent to forgo parental duties or relinquish parental claims may be evidenced by:

(A) Failure, for a period of at least six months, to communicate meaningfully with a child;

(B) Failure, for a period of at least six months, to maintain regular visitation with a child;

(C) Leaving a child with another person without provision for his or her support for a period of at least six months;

(D) Failure, for a period of at least six months, to participate in any court ordered

plan or program designed to reunite a child with his or her parent, guardian, or legal custodian;

(E) Leaving a child without affording means of identifying such child or his or her parent, guardian, or legal custodian and:

- i. The identity of such child's parent, guardian, or legal custodian cannot be ascertained despite diligent searching; and
- ii. A parent, guardian, or legal custodian has not come forward to claim such child within three months following the finding of such child;

(F) Being absent from the home of his or her child for a period of time that creates a substantial risk of serious harm to a child left in the home;

(G) Failure to respond, for a period of at least six months, to notice of child protective proceedings; or

(H) Any other conduct indicating an intent to forgo parental duties or relinquish parental claims.

(2) "Abortion" shall have the same meaning as set forth in Code Section 15-11-681.

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

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

(5) "Child abuse" means:

(A) Physical injury or death inflicted upon a child by a parent, guardian, legal custodian, or other person responsible for the care of such child 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 of a child by a parent, guardian, legal custodian, or other person responsible for the care of such child;

(C) Emotional abuse of a child;

(D) Sexual abuse or sexual exploitation of a child;

(E) Prenatal abuse of a child by a parent;

(F) An act or failure to act that presents an imminent risk of serious harm to the child's physical, mental, or emotional health; or

(G) Trafficking a child for labor servitude.

(6) "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.

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

(8) "Emotional abuse" means acts or omissions by a parent, guardian, legal custodian, or other person responsible for the care of a child that cause any mental injury to such child's intellectual or psychological capacity as evidenced by an observable and

significant impairment in such child's ability to function within a child's normal range of performance and behavior or that create a substantial risk of impairment.

- (9) "Labor servitude" means work or service of economic or financial value which is performed or provided by another individual and is induced or obtained by coercion or deception.
- (10) "Legal custodian" means:
  - (A) A person to whom legal custody of a child has been given by order of a court; or
  - (B) A public or private agency or other private organization licensed or otherwise authorized by law to receive and provide care for a child to which legal custody of such child has been given by order of a court.
- (11) "Neglect" means:
  - (A) The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child's physical, mental, or emotional health or morals;
  - (B) The failure to provide a child with adequate supervision necessary for such child's well-being; or
  - (C) The abandonment of a child by his or her parent, guardian, or legal custodian.
- (12) "Person responsible for the care of a child" means:
  - (A) An adult member of a child's household;
  - (B) A person exercising supervision over a child for any part of the 24 hour day; or
  - (C) Any adult who, based on his or her relationship to the parent, guardian, or legal custodian or a member of a child's household, has access to such child.
- (13) "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 the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws relating to patient confidentiality.
- (14) "Prenatal abuse" means exposure to chronic or severe use of alcohol or the unlawful use of any controlled substance, as such term is defined in Code Section 16-13-21, which results in:
  - (A) Symptoms of withdrawal in a newborn or the presence of a controlled substance or a metabolite thereof in a newborn's body, blood, urine, or meconium that is not the result of medical treatment; or

(B) Medically diagnosed and harmful effects in a newborn's physical appearance or functioning.

(15) "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.

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

(17) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not such 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;

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure; or

(J) Any act described by subsection (c) of Code Section 16-5-46. Sexual abuse shall include consensual sex acts when the sex acts are between minors if any individual is less than 14 years of age; provided, however, that it shall not include consensual sex acts when the sex acts are between a minor and an adult who is not more than four years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(18) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires a child to engage in:

(A) Sexual servitude, as defined in Code Section 16-5-46; 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 suspected child abuse has occurred shall report or cause reports of such 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) Dentists;
  - (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 counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;
  - (K) Child welfare agency personnel, as such agency is defined in 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 such 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, such person shall notify the person in charge of such hospital, school, agency, or 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, or modification or make any 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.
- (3) When a person identified in paragraph (1) of this subsection has reasonable cause to believe that child abuse has occurred involving a person who 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, the person who received such information shall notify the person in charge of such hospital, school, agency, or 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, or modification or make any 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 suspected child abuse has occurred may report or cause reports to be made as provided in this Code section.

(e)

(1) As used in the subsection, the term:

(A) “Active duty” means full-time duty status.

(B) “Armed forces of the United States” or “military” means the United States Army, United States Navy, United States Marine Corps, United States Coast Guard, United States Air Force, United States National Guard, Georgia Army National Guard, or Georgia Air National Guard, or a reserve component thereof.

(C) “Family advocacy program” means, for the particular branch, the program established by the military for the prevention, education, prompt reporting, investigation, intervention, or treatment of spouse or child abuse.

(D) “Military law enforcement” means, for the particular branch, the police corps, division, branch, agency, or authority of the military responsible for law enforcement or force protection.

(2) With respect to reporting required by subsection (c) of this Code section, an oral report by telephone or other oral communication or a written report by electronic submission or facsimile shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe that suspected child abuse has occurred. When a report is being made by electronic submission or facsimile to the Division of Family and Children Services of the Department of Human Services, it shall be done in the manner specified by the division. Oral reports shall be followed by a later report in writing, if requested, to a child welfare agency providing protective services, as designated by the Division of Family and Children Services of the Department of Human Services, or, in the absence of such agency, to an appropriate police authority or district attorney. Such report shall be provided to military law enforcement, if applicable. 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 and notify military law enforcement, if applicable. 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, the appropriate police authority, and military law enforcement.

- (3) For each child who is the subject of child abuse allegations, the child welfare agency as provided for in paragraph (1) of this subsection shall make efforts as soon as practicable to determine whether a parent or guardian of such child is on active duty in the armed forces of the United States. If such agency determines that a parent or guardian of such child is on active duty in the armed forces of the United States, such agency shall notify the applicable military installation's family advocacy program of the allegation of child abuse that relates to the parent or guardian of such child.
- (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, and individuals who otherwise provide information or assistance, including, but not limited to, medical evaluations or consultations, in connection with a report made to a child welfare agency providing protective services, an appropriate police authority, or military law enforcement pursuant to this Code section or any other law or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided that 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.
- (j) The treatment of a child in good faith 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 not in and of itself be considered child abuse.

## **O.C.G.A. § 19-15-1**

### **Definitions**

As used in this chapter, the term:

- (1) "Abused" means subjected to child abuse.
- (2) "Child" means any person under 18 years of age.
- (3) "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.
- (4) "Child advocacy center" means an entity which is operated for the purposes of investigating known or suspected child abuse and treating a child or a family that is the subject of a report of child abuse and which:

(A) Has been created and supported through one or more intracommunity compacts between such center and:

(i) One or more law enforcement agencies within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation;

(ii) The office of the district attorney, Attorney General, or United States Attorney General;

(iii) A legally mandated public or private child protective agency within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation;

(iv) A mental health board within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation; or

(v) A community health service board within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation; and

(B) Has been approved by a protocol committee.

(5) "Child protection professional" means any person who is employed by the state or a political subdivision of the state as a law enforcement officer, school teacher, school administrator, or school counselor or who is employed to render services to children by the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services or any county board of health, community service board, or county department of family and children services.

(6) "Investigation" in the context of child death includes all of the following:

(A) A post-mortem examination which may be limited to an external examination or may include an autopsy;

(B) An inquiry by law enforcement agencies having jurisdiction into the circumstances of the death, including a scene investigation and interview with the child's parents, guardian, or caretaker and the person who reported the child's death; and

(C) A review of information regarding the child and family from relevant agencies, professionals, and providers of medical care.

(7) "Panel" means the Georgia Child Fatality Review Panel established pursuant to Code Section 19-15-4.

(8) "Protocol committee" means a multidisciplinary, multiagency committee established pursuant to Code Section 19-15-2.

(9) "Report" means a standardized form designated by the panel which is required for collecting data on child fatalities reviewed by local child fatality review committees.

(10) "Review committee" means a multidisciplinary, multiagency child fatality review committee established for a county or circuit pursuant to Code Section 19-15-3.

(11) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not such 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 include consensual sex acts when the sex acts are between minors if any individual is less than 14 years of age; provided, however, that it shall not include consensual sex acts when the sex acts are between a minor and an adult who is not more than four years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(12) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires a child to engage in:

(A) Sexual servitude, as defined in Code Section 16-5-46; 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.

## **O.C.G.A. § 19-15-2**

### **Child Abuse Protocol Committee; adoption of written protocol**

(a) Except as provided in paragraph (3) of subsection (b) of this Code section, each county shall be required to establish a protocol for the investigation and prosecution of alleged cases of child abuse as provided in this Code section.

(b)(1) The chief superior court judge of the circuit in which the county is located shall establish a protocol committee as provided in subsection (c) of this Code section and shall appoint an interim chairperson who shall preside over the first meeting, and the chief superior court judge shall appoint persons to fill any vacancies on the protocol committee.

(2) After the establishment of a protocol committee, the committee members shall elect a chairperson from the protocol committee's membership. The protocol committee shall be charged with developing local protocols for the investigation and prosecution of alleged cases of child abuse.

(3) When a judicial circuit is composed of more than one county, the protocol committee shall determine if it shall be established for each county in the judicial circuit or if it will serve all of the counties within the judicial circuit.

(c)(I) Each of the following individuals, agencies, and entities shall designate a representative to serve on a protocol committee established pursuant to paragraph (I) of subsection (b) of this Code section:

- (A) The sheriff;
- (B) The county department of family and children services;
- (C) The district attorney for the judicial circuit;
- (D) The presiding juvenile court judge;
- (E) The chief magistrate;
- (F) The county board of education;
- (G) The county mental health organization;
- (H) The chief of police of a county in counties which have a county police department;
- (I) The chief of police of the largest municipality in the county;
- (J) The county public health department; and
- (K) The coroner or county medical examiner.

(2) Each of the following individuals, agencies, and entities shall designate a representative to serve on a protocol committee established pursuant to paragraph (3) of subsection (b) of this Code section:

- (A) The sheriff of each county in the judicial circuit;
- (B) The county department of family and children services of each county in the judicial circuit;
- (C) The district attorney for the judicial circuit;
- (D) The presiding juvenile court judge of each county in the judicial circuit;
- (E) The chief magistrate of each county in the judicial circuit;

(F) Each board of education in the judicial circuit;

(G) The county mental health organization of each county in the judicial circuit;

(H) The chief of police of each county in the judicial circuit, if any;

(I) The chief of police of the largest municipality in the judicial circuit;

(J) The county public health department of each county in the judicial circuit; and

(K) The coroner or county medical examiner of each county in the judicial circuit.

(3) A representative of a local child advocacy center shall serve on a protocol committee established under paragraph (I) or (3) of subsection (b) of this Code section if one exists in such location.

(4) A representative of a sexual assault center shall serve on a protocol committee established under paragraph (1) or (3) of subsection (b) of this Code section if one exists in such location.

(5) In addition to the representatives serving on the protocol committee as provided for in paragraphs (I) through (4) of this subsection, the chief superior court judge shall designate a representative from a local citizen or advocacy group which focuses on child abuse awareness and prevention to serve on such protocol committee.

(6) If any designated agency fails to carry out its duties relating to participation on the protocol 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) Each protocol committee chairperson shall be responsible for ensuring that written protocol procedures are followed by all agencies. Such person may be independent of agencies listed in paragraph (I) of subsection (c) of this Code section. The protocol committee may appoint such additional members as necessary and proper to accomplish the purposes of the protocol committee.

(e) The protocol committee shall adopt a written protocol which shall be filed with the Division of Family and Children Services of the Department of Human Services and the Office of the Child Advocate for the Protection of Children, a copy of which shall be furnished to each agency in the county handling the cases of abused children. The protocol shall be a written document outlining in detail the procedures to be used in investigating and prosecuting cases arising from alleged child abuse and the methods to be used in coordinating treatment programs for the perpetrator, the family, and the child. The protocol shall also outline procedures to be used when child abuse occurs in a household where there is violence between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household. The protocol adopted shall not be inconsistent with the policies and procedures of the Division of Family and Children Services of the Department of Human Services.

(f) The purpose of the protocol shall be to ensure coordination and cooperation between all agencies involved in a child abuse case so as to increase the efficiency of all agencies handling such cases, to minimize the stress created for the allegedly abused child by the legal and



investigatory process, and to ensure that more effective treatment is provided for the perpetrator, the family, and the child, including counseling.

(g) Upon completion of the writing of the protocol, the protocol committee shall continue in existence and shall meet at least semiannually for the purpose of evaluating the effectiveness of the protocol and appropriately modifying and updating the same. The protocol committee shall file the updated protocol with the Division of Family and Children Services of the Department of Human Services and the Office of the Child Advocate for the Protection of Children not later than the first day of September each year.

(h) Each protocol committee shall adopt or amend its written protocol to specify the circumstances under which law enforcement officers shall and shall not be required to accompany investigators from the county department of family and children services when these investigators investigate reports of child abuse. In determining when law enforcement officers shall and shall not accompany investigators, the protocol committee shall consider the need to protect the alleged victim and the need to preserve the confidentiality of the report. Each protocol committee shall establish joint work efforts between the law enforcement and investigative agencies in child abuse investigations. The adoption or amendment of the protocol shall also describe measures which can be taken within the county or circuit, as the case may be, to prevent child abuse and shall be filed with and furnished to the same entities with or to which an original protocol is required to be filed or furnished. The protocol shall be further amended to specify procedures to be adopted by the protocol committee to ensure that written protocol procedures are followed.

(i) The protocol committee shall issue a report no later than the first day of July each year. Such report shall evaluate the extent to which investigations of child abuse during the 12 months prior to the report have complied with the protocols of the protocol committee, recommend measures to improve compliance, and describe which measures taken within the county or circuit, as the case may be, to prevent child abuse have been successful. The report shall be transmitted to the county governing authority, the fall term grand jury of the judicial circuit, the Office of the Child Advocate for the Protection of Children, and the chief superior court judge of the circuit.

(j) Each member of each protocol committee shall receive appropriate training within 12 months after his or her appointment. The Office of the Child Advocate for the Protection of Children shall provide such training.

(k) The protocol committee shall include a written sexual abuse and sexual exploitation section within its protocol which shall be filed with the Division of Family and Children Services of the Department of Human Services and the Office of the Child Advocate for the Protection of Children, a copy of which shall be furnished to each agency in the county handling the cases of sexually abused or exploited children. The sexual abuse and sexual exploitation section of the protocol shall outline in detail the procedures to be used in investigating and prosecuting cases arising from alleged sexual abuse and sexual exploitation and the procedures to be followed concerning the obtainment of and payment for sexual assault examinations. The sexual abuse and sexual exploitation section of the protocol shall be consistent with the policies and procedures of the Division of Family and Children Services of the Department of Human Services. The sexual abuse and sexual exploitation section of the protocol is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Such section of the protocol shall not limit or otherwise restrict a prosecuting attorney in the exercise of his or her discretion nor in the exercise of any otherwise lawful litigative prerogatives.

## **O.C.G.A. § 19-15-5**

### **Open and closed meetings**

- (a) A protocol committee or review committee in the exercise of its duties shall be closed to the public and shall not be subject to Chapter 14 of Title 50, relating to open meetings.
- (b) The panel shall be open to the public as long as information identifying a deceased or abused child, any family member of the child, or alleged or suspected perpetrator of abuse upon the child is not disclosed during such meetings or proceedings, but the panel is authorized to close such meeting to the public when such identifying information is required to be disclosed to members of the panel in order for the panel to carry out its duties.

## **O.C.G.A. § 19-15-6**

### **Public records; confidential information**

- (a) Records and other documents which are made public records pursuant to any other provisions of law shall remain public records notwithstanding their being obtained, considered, or both, by a protocol committee, a review committee, or the panel.
- (b) Notwithstanding any other provision of law to the contrary, reports of a review committee made pursuant to Code Section 19-15-3 and reports of the panel made pursuant to Code Section 19-15-4 shall be public records and shall be released to any person making a request therefor, but the protocol committee, review committee, or panel having possession of such records or reports shall only release them after expunging therefrom all information contained therein which would permit identifying the deceased or abused child, any family member of the child, any alleged or suspected perpetrator of abuse upon the child, or any reporter of suspected child abuse.
- (c) Statistical compilations of data by a review committee or the panel based upon information received thereby and containing no information which would permit the identification of any person shall be public records.
- (d) Members of a protocol committee, a review committee, or of the panel shall not disclose what transpires at any meeting other than one made public by Code Section 19-15-5 nor disclose any information the disclosure of which is prohibited by this Code section, except to carry out the purposes of this chapter. Any person who knowingly violates this subsection shall be guilty of a misdemeanor.
- (e) A person who presents information to a protocol committee, a review committee, or the panel or who is a member of any such body shall not be questioned in any civil or criminal proceeding regarding such presentation or regarding opinions formed by or confidential information obtained by such person as a result of serving as a member of any such body. This subsection shall not be construed to prohibit any person from testifying regarding information obtained independently of a protocol committee, a review committee, or the panel. In any proceeding in which testimony of such a member is offered the court shall first determine the source of such witness's knowledge.
- (f) Except as otherwise provided in this Code section, information acquired by and records of a protocol committee, a review committee, or the panel shall be confidential, shall not be disclosed, and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

(g) A member of a protocol committee, a review committee, or the panel shall not be civilly liable or subject to criminal prosecution for any disclosure of information made by such member as authorized by this Code section.

(h) Members of the review committee, persons attending a review committee meeting, and persons who present information to a review committee may release information to such government agencies as is necessary for the purpose of carrying out assigned review committee duties.

(i) Notwithstanding any other provisions of law, information acquired by and documents, records, and reports of the panel and protocol committees and review committees applicable to a child who at the time of his or her death was in the custody of a state department or agency or foster parent shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

### **O.C.G.A. § 24-5-509**

Communications between victim of family violence or sexual assault and agents providing services to such victim; termination of privilege

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

(1) "Agent" means a current or former employee or volunteer of a program who has successfully completed a minimum of 20 hours of training in family violence and sexual assault intervention and prevention at a Criminal Justice Coordinating Council certified victim assistance program.

(2) "Family violence" shall have the same meaning as provided in Code Section 19-13-1.

(3) "Family violence shelter" means a program whose primary purpose is to provide services to family violence victims and their families that is not under the direct supervision of a law enforcement agency, prosecuting attorney's office, or a government agency.

(4) "Family violence victim" means a person who consults a family violence shelter for the purpose of securing advice or other services concerning an act of family violence, an alleged act of family violence, or an attempted act of family violence.

(5) "Government agency" means any agency of the executive, legislative, or judicial branch of government or political subdivision or authority thereof of this state, any other state, the District of Columbia, the United States and its territories and possessions, or any foreign government or international governmental or quasi-governmental agency recognized by the United States or by any of the several states.

(6) "Negative effect of the disclosure of the evidence on the victim" shall include the impact of the disclosure on the relationship between the victim and the agent and the delivery and accessibility of services.

(7) "Program" means a family violence shelter or rape crisis center.

(8) "Rape crisis center" means a program whose primary purpose is to provide services to sexual assault victims and their families that is not under the direct supervision of a law

enforcement agency, prosecuting attorney's office, or a government agency.

(9) "Services" means any services provided to a victim by a program including but not limited to crisis hot lines, safe homes and shelters, assessment and intake, counseling, services for children who are victims of family violence or sexual assault, support in medical, administrative, and judicial systems, transportation, relocation, and crisis intervention. Such term shall not include mandatory reporting as required by Code Section 19-7-5 or 30-5-4.

(10) "Sexual assault" shall have the same meaning as provided in Code Section 17-5-70.

(11) "Sexual assault victim" means a person who consults a rape crisis center for the purpose of securing advice or other services concerning a sexual assault, an alleged sexual assault, or an attempted sexual assault.

(12) "Victim" means a family violence victim or sexual assault victim.

(b) No agent of a program shall be compelled to disclose any evidence in a judicial proceeding that the agent acquired while providing services to a victim, provided that such evidence was necessary to enable the agent to render services, unless the privilege has been waived by the victim or, upon motion by a party, the court finds by a preponderance of the evidence at a pretrial hearing or hearing outside the presence of the jury that:

(I) In a civil proceeding:

(A) The evidence sought is material and relevant to factual issues to be determined;

(B) The evidence is not sought solely for the purpose of referring to the victim's character for truthfulness or untruthfulness; provided, however, that this subparagraph shall not apply to evidence of the victim's prior inconsistent statements;

(C) The evidence sought is not available or already obtained by the party seeking disclosure; and

(D) The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim; or

(2) In a criminal proceeding:

(A) The evidence sought is material and relevant to the issue of guilt, degree of guilt, or sentencing for the offense charged or a lesser included offense;

(B) The evidence is not sought solely for the purpose of referring to the victim's character for truthfulness or untruthfulness; provided, however, that this subparagraph shall not apply to evidence of the victim's prior inconsistent statements;

(C) The evidence sought is not available or already obtained by the party seeking disclosure; and

(D) The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.

(c) If the court finds that the evidence sought may be subject to disclosure pursuant to subsection (b) of this Code section, the court shall order that such evidence be produced for the court under seal, shall examine the evidence in camera, and may allow disclosure of those portions of the evidence that the court finds are subject to disclosure under this Code section.

(d) The privilege afforded under this Code section shall terminate upon the death of the victim.

(e) The privilege granted by this Code section shall not apply if the agent was a witness or party to the family violence or sexual assault or other crime that occurred in the agent's presence.

(f) The mere presence of a third person during communications between an agent and a victim shall not void the privilege granted by this Code section, provided that the communication occurred in a setting when or where the victim had a reasonable expectation of privacy.

(g) If the victim is or has been judicially determined to be incompetent, the victim's guardian may waive the victim's privilege.

(h) In criminal proceedings, if either party intends to compel evidence based on this Code section, the party shall file and serve notice of his or her intention on the opposing party at least ten days prior to trial, or as otherwise directed by the court. The court shall hold a pretrial hearing in accordance with subsection (b) of this Code section and determine the issue prior to trial.

#### **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 or investment company 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 or investment company while that employee is acting as a fiduciary, 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)(1)(A) A report that a disabled adult or elder person 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 make a reasonable determination based on available information as to whether the incident alleges actions by an individual, other than the disabled adult or elder person, that constitute a crime and include such information in their report. If a crime is suspected, the report shall immediately be forwarded to the appropriate law enforcement agency or prosecuting attorney. During an adult protection agency's investigation, it shall be under a continuing obligation to immediately report the discovery of any evidence that may constitute a crime.

(B) If the disabled adult or person is 65 years of age or older and is a resident, 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) Reporting required by subparagraph (A) of paragraph (1) of this subsection may be made by oral or written communication. Such 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.

(3) When a report of a disabled adult's or elder person's abuse, neglect, or exploitation is originally reported to a law enforcement agency, it shall be forwarded by such agency to the director or his or her designee within 24 hours of receipt.

(c) Anyone who makes a report pursuant to this chapter, who testifies in any judicial proceeding arising from the report, who provides protective services, who participates in a required investigation, or who participates on an Adult Abuse, Neglect, and Exploitation Multidisciplinary Team under the provisions of this chapter shall be immune from any civil liability or criminal prosecution 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 or investment company, 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 liability or criminal prosecution on account of such report or testimony or participation of its employee, unless such financial institution or investment company 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. § 31-8-82**

##### **Persons required to report abuse or exploitation; time for making report; contents of report; records; privileged communications**

(a) Any of the following people who have reasonable cause to believe that any resident or former resident has been abused or exploited while residing in a long-term care facility shall immediately make a report as described in subsection (d) of this Code section by telephone or in person to the department and shall make the report to the appropriate law enforcement agency or prosecuting attorney:

(1) Any person required to report child abuse as provided in subsection (c) of Code Section 19-7-5;

(2) Administrators, managers, or other employees of hospitals or long-term care facilities;

(3) Physical therapists;

(4) Occupational therapists;

(5) Day-care personnel;

(6) Coroners;

(7) Medical examiners;



(8) Emergency medical services personnel, as defined in Code Section 31-11-49;

(9) Any person who has been certified as an emergency medical technician, cardiac technician, paramedic, or first responder pursuant to Chapter 11 of Title 31;

(10) Employees of a public or private agency engaged in professional health related services to residents; and

(11) Clergy members.

(b) Persons required to make a report pursuant to subsection (a) of this Code section shall also make a written report to the department within 24 hours after making the initial report.

(c) Any other person who has knowledge that a resident or former resident has been abused or exploited while residing in a long-term care facility may report or cause a report to be made to the department or the appropriate law enforcement agency.

(d) A report of suspected abuse or exploitation shall include the following:

(1) The name and address of the person making the report unless such person is not required to make a report;

(2) The name and address of the resident or former resident;

(3) The name and address of the long-term care facility;

(4) The nature and extent of any injuries or the condition resulting from the suspected abuse or exploitation;

(5) The suspected cause of the abuse or exploitation; and

(6) Any other information which the reporter believes might be helpful in determining the cause of the resident's injuries or condition and in determining the identity of the person or persons responsible for the abuse or exploitation.

(e) The department shall maintain accurate records which shall include all reports of abuse or exploitation, the results of all investigations and administrative or judicial proceedings, and a summary of actions taken to assist the resident.

(f) Any suspected abuse or exploitation 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 or exploitation 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 or exploitation 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. § 31-9-2**

**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 or psychiatric advance directive under Chapter 11 of Title 37;

(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.

(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 minors for treatment of sexually transmitted disease; validity of consent; information to other persons**

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 sexually transmitted disease or at risk for HIV, shall be

as valid and binding as if the minor had achieved his or her majority, provided that any such treatment shall involve procedures and therapy related to conditions or illnesses arising out of the sexually transmitted disease or HIV diagnosis 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.

**O.C.G.A. § 35-1-2(a)(b)(c)**

**Compassionate care for victims of sexual assault**

(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 him or her 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.

# MEMORANDUM OF UNDERSTANDING

## NORTHEASTERN JUDICIAL CIRCUIT SEXUAL ASSAULT PROTOCOL COMMITTEE

Whereas, the committee having read and agreed to the provisions outlined in this document as it relates to the investigation, prosecution, and victim services of cases of sexual assault on February 5, 2025.

Whereas, this agreement becomes effective February 11, 2025, replaces any previously adopted protocol, and remains in effect until a new agreement is dispatched.

Whereas, the parties retain the right of termination of any of the terms which change and materially affect the intent of the agreement with prior notification to the Chief Judge in the Northeastern Judicial Circuit.

Whereas, this agreement does not constitute any promise of compensation, nor is it binding parties to any legal record.

Whereas, this committee agrees to reconvene annually to review and revise this document.

Whereas, pursuant to O.C.G.A § 15-24-2, the names contained herein represents the agencies participating in the Northeastern Judicial Circuit Sexual Assault Protocol Committee Judicial Circuit.

It is therefore agreed by the undersigned that this document shall be and is the **Sexual Assault**

### Protocol for the Northeastern Judicial Circuit.

Signed by: Judge Jason J. Deal 2/7/2025  
698F45C68ADE447...

**NE Judicial Circuit Superior Court Judge**

Signed by: Joshua Holt 2/19/2025  
58267254BBF14EF...

**Dawson County DFCS**

Signed by: Jeff Johnson 2/19/2025  
81E2FFBFC1445A...

**Dawson County Sheriff's Office**

Signed by: Dr. Zachary Taylor 2/7/2025  
AE56A8CA75314F7...

**District 2 North Georgia Division of Public Health**

Signed by: Chief Chris Hulsey 2/25/2025  
AD40D39811C44C6...

**Flowery Branch Police Department**

Signed by: Jessica Butler 2/7/2025  
5204859EE38A42C...

**Gateway Domestic Violence Center**

Signed by: Alin W. Toller 2/26/2025  
C1F68EBD7776413...

**Hall County Juvenile Court**

Signed by: Gerald Couch 2/26/2025  
A3C5FA30E4734AC...

**Hall County Sheriff's Office**

Signed by: Stephanie Thompson 2/7/2025  
8AC6BF5C28E04A9...

**Hall County State Court – Solicitor General**

Signed by: Greg Williams 2/7/2025  
6441414CBGB34446...

**University of North Georgia Police Dpt.**

Signed by: [Signature] 2/20/2025  
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**Children's Center for Hope and Healing**

Signed by: Alex G Myers 2/7/2025  
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**Dawson County Magistrate Court**

DocuSigned by: Lee Damagh 2/7/2025  
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**District Attorney, Northeastern Judicial Circuit**

DocuSigned by: Heather Head 2/7/2025  
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**Edmondson Telford Center for Children**

Signed by: [Signature] 2/26/2025  
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**Gainesville Police Department**

DocuSigned by: [Signature] 2/17/2025  
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**Hall County DFCS**

Signed by: Judge Michelle Hall 2/7/2025  
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**Hall County Magistrate Court**

Signed by: [Signature] 2/10/2025  
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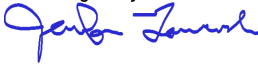

**Hall County State Court**

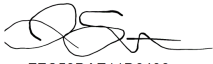
DocuSigned by: Chief Jeff Strickland 2/12/2025  
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**Lanier Technical College Police Dpt.**

Signed by: Chief Tim Hatch 2/18/2025  
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**Oakwood Police Department**

DocuSigned by:  
  
2/7/2025  
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**Bridging Hope (Formerly RR)-Exec Director**  
Signed by:  
  
2/7/2025  
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**Local Citizen of the Judicial Circuit**

DocuSigned by:  
  
2/7/2025  
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**Bridging Hope (Formerly RR)-SANE Prog. Dir.**