

Senate Bill 250

By: Senators Mullis of the 53rd, Unterman of the 45th, Jones II of the 22nd, Kirk of the 13th, Tate of the 38th and others

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

To amend Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to the Sexual Offender Registration Review Board, so as to require registration on the State Sexual Offender Registry when an individual is convicted in another country; to provide that the sentencing superior court judge shall make the risk assessment classification as part of sentencing for sexual offenders convicted in this state; to provide for recommendations by the Sexual Offender Registration Review Board to such sentencing judge; to provide for appeals; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 1 of Title 42 of the Official Code of Georgia Annotated, relating to the Sexual Offender Registration Review Board, is amended in paragraph (10) of subsection (a) by revising subparagraph (B.1) and adding a new subparagraph and in paragraphs (6) through (8) of subsection (e) of Code Section 42-1-12, relating to the State Sexual Offender Registry, as follows:

"(B.1) 'Dangerous sexual offense' with respect to convictions occurring ~~after June 30, 2015~~ between July 1, 2015, and June 30, 2017, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this ~~paragraph~~ subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
- (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;
- (iii) Trafficking a person for sexual servitude in violation of Code Section 16-5-46;
- (iv) Rape in violation of Code Section 16-6-1;
- (v) Sodomy in violation of Code Section 16-6-2;

- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
  - (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
  - (viii) Child molestation in violation of Code Section 16-6-4;
  - (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
  - (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
  - (xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;
  - (xii) Incest in violation of Code Section 16-6-22;
  - (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;
  - (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
  - (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
  - (xvi) Electronically furnishing obscene material to minors in violation of Code Section 16-12-100.1;
  - (xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;
  - (xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or
  - (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.
- (B.2) 'Dangerous sexual offense' with respect to convictions occurring after June 30, 2017, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States or the laws of another country which consists of the same or similar elements of the following offenses:
- (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
  - (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who is less than 14 years of age, except by a parent;
  - (iii) Trafficking a person for sexual servitude in violation of Code Section 16-5-46;
  - (iv) Rape in violation of Code Section 16-6-1;
  - (v) Sodomy in violation of Code Section 16-6-2;
  - (vi) Aggravated sodomy in violation of Code Section 16-6-2;
  - (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
  - (viii) Child molestation in violation of Code Section 16-6-4;
  - (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
  - (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

(xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;

(xii) Incest in violation of Code Section 16-6-22;

(xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;

(xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;

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

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

(xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or

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

"(6) Is a nonresident who changes residence from another state or territory of the United States or any other place to Georgia who is required to register as a sexual offender under federal law, military law, tribal law, ~~or~~ the laws of another state or territory, or the laws of another country or who has been convicted in this state of a criminal offense against a victim who is a minor or any dangerous sexual offense;

(7) Is a nonresident sexual offender who enters this state for the purpose of employment or any other reason for a period exceeding 14 consecutive days or for an aggregate period of time exceeding 30 days during any calendar year regardless of whether such sexual offender is required to register under federal law, military law, tribal law, ~~or~~ the laws of another state or territory, or the laws of another country; or

(8) Is a nonresident sexual offender who enters this state for the purpose of attending school as a full-time or part-time student regardless of whether such sexual offender is required to register under federal law, military law, tribal law, ~~or~~ the laws of another state or territory, or the laws of another country."

## SECTION 2.

Said article is further amended by revising Code Section 42-1-14, relating to risk assessment classification, classification as a "sexually dangerous predator", and electronic monitoring, as follows:

"42-1-14.

(a)(1) The sentencing superior court judge or board, respectively, shall determine the likelihood that a sexual offender will engage in another crime against a victim who is a minor or a dangerous sexual offense. The ~~board~~ sentencing superior court judge shall make such determination for any sexual offender convicted on or after July 1, ~~2006~~ 2017, of a criminal offense against a victim who is a minor or a dangerous sexual offense ~~and~~

101 ~~for any sexual offender incarcerated on July 1, 2006, but convicted prior to July 1, 2006,~~  
102 ~~of a criminal offense against a victim who is a minor; provided, however, that the~~  
103 ~~sentencing superior court judge may seek a recommendation from the board in making~~  
104 ~~such determination.~~ Any sexual offender who changes residence from another state or  
105 territory of the United States or any other place to this state and who is not already  
106 designated under Georgia law as a sexually dangerous predator, sexual predator, or  
107 sexually violent predator shall have his or her required registration information forwarded  
108 by the sheriff of his or her county of registration to the board for the purpose of risk  
109 assessment classification. The board shall also make a recommendation about such  
110 determination upon the request of a superior court judge for purposes of considering a  
111 petition to be released from registration restrictions or residency or employment  
112 restrictions as provided for in Code Section 42-1-19.

113 (2) A sexual offender shall be placed into Level I risk assessment classification, Level  
114 II risk assessment classification, or sexually dangerous predator classification; if such  
115 determination is being made by a superior court judge pursuant to this Code section, it  
116 shall be based upon the facts and circumstances of the case and any requested  
117 recommendation received from the board, and if such determination is being made by the  
118 board pursuant to this Code section, it shall be based upon the board's assessment criteria  
119 and information obtained and reviewed by the board. The sexual offender may provide  
120 the board with information, including, but not limited to, psychological evaluations,  
121 sexual history polygraph information, treatment history, and personal, social, educational,  
122 and work history, and may agree to submit to a psychosexual evaluation or sexual history  
123 polygraph conducted by the board and, upon request for a recommendation by a superior  
124 court judge, the board shall use such information in rendering such recommendation. If  
125 the sexual offender has undergone treatment or supervision through the Department of  
126 Corrections or the Department of Community Supervision, such treatment records shall  
127 also be submitted to the board for evaluation in rendering such determination or  
128 recommendation. The prosecuting attorney shall provide the board with any information  
129 available to assist the board in rendering an opinion, including, but not limited to,  
130 criminal history and records related to previous criminal history. The board shall utilize  
131 the Georgia Bureau of Investigation to assist it in obtaining information relative to its  
132 evaluation of sexual offenders and the Georgia Bureau of Investigation shall provide the  
133 board with information as requested by the board. The board shall be authorized to  
134 obtain information from supervision records of the State Board of Pardons and Paroles  
135 regarding such sexual offender, but such records shall remain confidential state secrets  
136 in accordance with Code Section 42-9-53 and shall not be made available to any other  
137 person or entity or be subject to subpoena unless declassified by the State Board of

Pardons and Paroles. The clerk of court shall send a copy of the sexual offender's conviction to the board and, if a recommendation has been requested by a superior court judge, notify the board that a sexual offender's evaluation will need to be performed. The board shall render its recommendation for risk assessment classification within:

(A) Sixty days of receipt of a request for an evaluation if the sexual offender is being sentenced pursuant to subsection (c) of Code Section 17-10-6.2;

(B) Six months prior to the sexual offender's proposed release from confinement if the offender is incarcerated;

(C) Sixty days of receipt of the required registration information from the sheriff when the sexual offender changes residence from another state or territory of the United States or any other place to this state and is not already classified;

(D) Sixty days if the sexual offender is sentenced to a probated or suspended sentence; and

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

(2.1) The superior court judge shall make a determination under this Code section at sentencing or within 15 days of receipt of a requested recommendation from the board, whichever is later.

(3) The superior court judge, for his or her determinations, shall render his or her determination by order of the court and notify the sexual offender of such order by first-class mail and the board, for its determinations, shall notify the sexual offender by first-class mail of its determination of risk assessment classification; provided, however, that and each shall send a copy of such classification to the Georgia Bureau of Investigation, the Department of Corrections, the Department of Community Supervision, and the sheriff of the county where the sexual offender is registered, and the sentencing court, if applicable.

(b) If the superior court judge or board determines that a sexual offender should be classified as a Level II risk assessment classification or as a sexually dangerous predator, the sexual offender may petition the superior court or board, as the case may be, to reevaluate his or her classification. To file a petition for reevaluation, the sexual offender shall be required to submit his or her written petition for reevaluation to the superior court or board within 30 days from the date of the letter notifying the sexual offender of his or her classification. The sexual offender shall have 60 days from the date of the notification ~~letter~~ to submit information as provided in subsection (a) of this Code section in support of the sexual offender's petition for reevaluation. If the sexual offender fails to submit the petition or supporting documents within the time limits provided, the classification shall be final. The superior court shall, by first-class mail, notify the sexual offender of its order

on the petition for reevaluation of risk assessment and the board shall notify the sexual offender by first-class mail of its decision on the petition for reevaluation of risk assessment classification; provided, however, that ~~and each~~ shall send a copy of such notification to the Georgia Bureau of Investigation, the Department of Corrections, the Department of Community Supervision, and the sheriff of the county where the sexual offender is registered, ~~and the sentencing court, if applicable.~~

(c) A sexual offender who is classified by the board as a Level II risk assessment classification or as a sexually dangerous predator may file a petition for judicial review of his or her classification within 30 days of the date of the notification letter or, if the sexual offender has requested reevaluation pursuant to subsection (b) of this Code section, within 30 days of the date of the letter denying the petition for reevaluation. The petition for judicial review shall name the board as defendant, and the petition shall be filed in the superior court of the county where the offices of the board are located. Within 30 days after service of the appeal on the board, the board shall submit a summary of its findings to the court and mail a copy, by first-class mail, to the sexual offender. The findings of the board shall be considered prima-facie evidence of the classification. The court shall also consider any relevant evidence submitted, and such evidence and documentation shall be mailed to the parties as well as submitted to the court. The court may hold a hearing to determine the issue of classification. The court may uphold the classification of the board, or, if the court finds by a preponderance of the evidence that the sexual offender is not placed in the appropriate classification level, the court shall place the sexual offender in the appropriate risk assessment classification. The court's determination shall be forwarded by the clerk of the court to the board, the sexual offender, the Georgia Bureau of Investigation, and the sheriff of the county where the sexual offender is registered.

(c.1) A sexual offender who is classified by the sentencing superior court judge as a Level II risk assessment classification or as a sexually dangerous predator may appeal such classification in the same manner as is provided for other appeals pursuant to Title 5.

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

(e) Any sexually dangerous predator shall be required to wear an electronic monitoring system that shall have, at a minimum:

- (1) The capacity to locate and record the location of a sexually dangerous predator by a link to a global positioning satellite system;
- (2) The capacity to timely report or record a sexually dangerous predator's presence near or within a crime scene or in a prohibited area or the sexually dangerous predator's departure from specific geographic locations; and

(3) An alarm that is automatically activated and broadcasts the sexually dangerous predator's location if the global positioning satellite monitor is removed or tampered with by anyone other than a law enforcement official designated to maintain and remove or replace the equipment.

Such electronic monitoring system shall be worn by a sexually dangerous predator for the remainder of his or her natural life. The sexually dangerous predator shall pay the cost of such system to the Department of Community Supervision if the sexually dangerous predator is under probation or parole supervision and to the sheriff after the sexually dangerous predator completes his or her term of probation and parole or if the sexually dangerous predator has moved to this state from another state, territory, or country. The electronic monitoring system shall be placed upon the sexually dangerous predator prior to his or her release from confinement. If the sexual offender is not in custody, within 72 hours of the decision classifying the sexual offender as a sexually dangerous predator in accordance with subsection (b) of this Code section, the sexually dangerous predator shall report to the sheriff of the county of his or her residence for purposes of having the electronic monitoring system placed on the sexually dangerous predator.

(f) In addition to the requirements of registration for all sexual offenders, a sexually dangerous predator shall report to the sheriff of the county where such predator resides six months following his or her birth month and update or verify his or her required registration information."

### **SECTION 3.**

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