

House Bill 424 (AS PASSED HOUSE AND SENATE)

By: Representatives Silcox of the 52<sup>nd</sup>, Cooper of the 43<sup>rd</sup>, Kelley of the 16<sup>th</sup>, and Gravley of the 67<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and  
2 offenses, so as to repeal an enhanced penalty relating to battery against a person 65 years of  
3 age or older; to revise a definition relative to the protection of disabled adults and elder  
4 persons; to revise penalties related to trafficking of persons for labor or sexual servitude; to  
5 include certain sex crimes into the definition of criminal gang activity; to revise and provide  
6 for a definition; to amend Title 24 of the Official Code of Georgia Annotated, relating to  
7 evidence, so as to revise rules pertaining to the admissibility of a complainant's past sexual  
8 behavior in prosecutions for certain sexual offenses; to provide for exceptions; to amend  
9 Code Section 31-7-12.1 of the Official Code of Georgia Annotated, relating to unlicensed  
10 personal care homes, so as to authorize inspections of unlicensed personal care homes by a  
11 local or state law enforcement agency under certain circumstances; to provide for related  
12 matters; to provide for applicability; to provide for an effective date; to repeal conflicting  
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
17 amended in Code Section 16-5-23.1, relating to battery, by revising subsections (c), (j), (k),  
18 and (l) as follows:

19 "(c) Except as provided in subsections (d) through ~~(f)~~(k) of this Code section, a person who  
20 commits the offense of battery is guilty of a misdemeanor."

21 "~~(j) Except as otherwise provided in subsection (e) and paragraph (2) of subsection (f) of~~  
22 ~~this Code section, any person who commits the offense of battery against a person who is~~  
23 ~~65 years of age or older shall, upon conviction thereof, be punished for a misdemeanor of~~  
24 ~~a high and aggravated nature.~~

25 ~~(k)~~(j) A person who is an employee, agent, or volunteer at any facility licensed or required  
26 to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code

27 Section 31-7-12.2, relating to assisted living communities, or Code Section 31-7-12,  
 28 relating to personal care homes, or who is required to be licensed pursuant to Code Section  
 29 31-7-151 or 31-7-173, relating to home health care and hospices, who commits the offense  
 30 of battery against a person who is admitted to or receiving services from such facility,  
 31 person, or entity shall, upon conviction thereof, be punished by imprisonment for not less  
 32 than one nor more than five years, or a fine of not more than \$2,000.00, or both.

33 ~~(f)~~(k) Any person who commits the offense of battery against a sports official while such  
 34 sports official is officiating an amateur contest or while such sports official is on or exiting  
 35 the property where he or she will officiate or has completed officiating an amateur contest  
 36 shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated  
 37 nature. For purposes of this Code section, the term 'sports official' means any person who  
 38 officiates, umpires, or referees an amateur contest at the collegiate, elementary or  
 39 secondary school, or recreational level."

40

## SECTION 2.

41 Said title is further amended by revising subsection (f) of Code Section 16-5-46, relating to  
 42 trafficking of persons for labor or sexual servitude, as follows:

43 "(f)(1) Except as provided in paragraph (2) of this subsection, any person who commits  
 44 the offense of trafficking an individual for labor servitude or sexual servitude shall be  
 45 guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for  
 46 not less than ten nor more than 20 years and a fine not to exceed \$100,000.00.

47 (2) Any person who commits the offense of trafficking an individual for labor servitude  
 48 or sexual servitude against an individual who is under 18 years of age ~~and such individual~~  
 49 ~~under the age of 18 years was coerced or deceived into being trafficked for labor~~ or if the  
 50 offense is committed against an individual who has a developmental disability, the person  
 51 shall be guilty of a felony, and upon conviction thereof, shall be punished by  
 52 imprisonment for not less than 25 nor more than 50 years or life imprisonment and a fine  
 53 not to exceed \$100,000.00.

54 ~~(3) Except as provided in paragraph (4) of this subsection, any person who violates~~  
 55 ~~paragraph (1) or (2) of subsection (c) of this Code section shall be guilty of a felony, and~~  
 56 ~~upon conviction thereof, shall be punished by imprisonment for not less than ten nor~~  
 57 ~~more than 20 years.~~

58 ~~(4) Any person who violates paragraph (1) or (2) of subsection (c) of this Code section~~  
 59 ~~committed against an individual under 18 years of age and such individual under the age~~  
 60 ~~of 18 years was coerced or deceived into such violation or if such violation is committed~~  
 61 ~~against an individual who has a developmental disability, such person shall be guilty of~~

62 a felony, and upon conviction thereof, shall be punished by imprisonment for not less  
63 than 25 nor more than 50 years or life imprisonment.

64 ~~(5) Any person who violates paragraph (3) of subsection (c) of this Code section shall  
65 be guilty of a felony. When such offense is committed against an individual who is 16  
66 years of age or older, upon conviction, such person shall be punished by imprisonment  
67 for not less than five nor more than 20 years. When such offense is committed against  
68 an individual who is younger than 16 years of age or an individual known to have a  
69 developmental disability, upon conviction, such person shall be punished by  
70 imprisonment for not less than ten nor more than 20 years."~~

71 **SECTION 3**

72 Said title is further amended in Code Section 16-5-100, relating to definitions relative to the  
73 protection of elder persons, by revising paragraph (6) as follows:

74 "(6) 'Exploit' means illegally or improperly using a disabled adult or elder person or that  
75 person's resources through undue influence, coercion, harassment, duress, deception, false  
76 representation, false pretense, or other similar means for one's own or another person's  
77 profit or advantage, including, but not limited to, the illegal taking of resources belonging  
78 to a disabled adult or elder person when access to the resources was obtained due to the  
79 disabled adult's or elder person's mental or physical incapacity."

80 **SECTION 4.**

81 Said title is further amended by revising Code Section 16-15-3, relating to definitions, as  
82 follows:

83 "16-15-3.

84 As used in this chapter, the term:

85 (1) 'Criminal gang activity' means the commission, attempted commission, conspiracy  
86 to commit, or the solicitation, coercion, or intimidation of another person to commit any  
87 of the following offenses on or after July 1, 2006:

88 (A) Any offense defined as racketeering activity by Code Section 16-14-3;

89 (B) Any offense defined in Article 7 of Chapter 5 of this title, relating to stalking;

90 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,  
91 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;

92 (D) Any offense defined in Article 3 of Chapter 10 of this title, relating to escape and  
93 other offenses related to confinement;

94 (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous  
95 instrumentalities and practices;

- 96 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or  
 97 42-5-19, relating to the security of state or county correctional facilities;
- 98 (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging  
 99 a child to escape from custody;
- 100 (H) Any offense of criminal trespass or criminal damage to property resulting from any  
 101 act of gang related painting on, tagging, marking on, writing on, or creating any form  
 102 of graffiti on the property of another;
- 103 (I) Any criminal offense committed in violation of the laws of the United States or its  
 104 territories, dominions, or possessions, any of the several states, or any foreign nation  
 105 which, if committed in this state, would be considered criminal gang activity under this  
 106 Code section; and
- 107 (J) Any criminal offense in the State of Georgia, any other state, or the United States  
 108 that involves violence, possession of a weapon, or use of a weapon, whether designated  
 109 as a felony or not, and regardless of the maximum sentence that could be imposed or  
 110 actually was imposed.
- 111 (2) 'Criminal gang activity' on and after the effective date of this paragraph shall also  
 112 mean the commission, attempted commission, conspiracy to commit, or the solicitation,  
 113 coercion, or intimidation of another person to commit on and after the effective date of  
 114 this paragraph any offense defined in Code Section 16-5-46 as trafficking persons for  
 115 labor servitude or sexual servitude, 16-6-10 as keeping a place of prostitution, 16-6-11  
 116 as pimping, or 16-6-12 as pandering.
- 117 (3) 'Criminal street gang' means any organization, association, or group of three or more  
 118 persons associated in fact, whether formal or informal, which engages in criminal gang  
 119 activity as defined in paragraph (1) of this Code section. The existence of such  
 120 organization, association, or group of individuals associated in fact may be established  
 121 by evidence of a common name or common identifying signs, symbols, tattoos, graffiti,  
 122 or attire or other distinguishing characteristics, including, but not limited to, common  
 123 activities, customs, or behaviors. Such term shall not include three or more persons,  
 124 associated in fact, whether formal or informal, who are not engaged in criminal gang  
 125 activity."

## 126 SECTION 5.

127 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by  
 128 revising Code Section 24-4-412, relating to complainant's past sexual behavior not  
 129 admissible in prosecutions for certain sexual offenses and exceptions, as follows:  
 130 "24-4-412.

131 (a) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault  
 132 with the intent to rape in violation of Code Section 16-5-21; trafficking persons for labor  
 133 servitude or sexual servitude in violation of Code Section 16-5-46; aggravated sodomy or  
 134 sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code  
 135 Section 16-6-3; aggravated child molestation or child molestation in violation of Code  
 136 Section 16-6-4; keeping a place of prostitution in violation of Code Section 16-6-10;  
 137 pimping in violation of Code Section 16-6-11; pandering in violation of Code  
 138 Section 16-6-12; incest in violation of Code Section 16-6-22; sexual battery in violation  
 139 of Code Section 16-6-22.1; or aggravated sexual battery in violation of Code  
 140 Section 16-6-22.2, evidence relating to the past sexual behavior of the complaining witness  
 141 shall not be admissible, either as direct evidence or on cross-examination of the  
 142 complaining witness or other witnesses, except as provided in this Code section. For the  
 143 purposes of this Code section, evidence of past sexual behavior includes, but is not limited  
 144 to, evidence of the complaining witness's marital history, mode of dress, general reputation  
 145 for promiscuity, nonchastity, or sexual mores contrary to the community standards.

146 (b) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault  
 147 with the intent to rape in violation of Code Section 16-5-21; trafficking persons for labor  
 148 servitude or sexual servitude in violation of Code Section 16-5-46; aggravated sodomy or  
 149 sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code  
 150 Section 16-6-3; aggravated child molestation or child molestation in violation of Code  
 151 Section 16-6-4; keeping a place of prostitution in violation of Code Section 16-6-10;  
 152 pimping in violation of Code Section 16-6-11; pandering in violation of Code  
 153 Section 16-6-12; incest in violation of Code Section 16-6-22; sexual battery in violation  
 154 of Code Section 16-6-22.1; or aggravated sexual battery in violation of Code Section  
 155 16-6-22.2, ~~evidence relating to the past sexual behavior of the complaining witness may~~  
 156 ~~be introduced if the court may admit the following evidence relating to the past sexual~~  
 157 behavior of the complaining witness, following the procedure described in subsection (c)  
 158 of this Code section, ~~finds that the past sexual behavior directly involved the participation~~  
 159 ~~of the accused and finds that the evidence expected to be introduced supports an inference~~  
 160 ~~that the accused could have reasonably believed that the complaining witness consented~~  
 161 ~~to the conduct complained of in the prosecution;~~

162 (1) Evidence of specific instances of a victim's or complaining witness's sexual behavior,  
 163 if offered to prove that someone other than the defendant was the source of semen, injury,  
 164 or other physical evidence;

165 (2) Evidence of specific instances of a victim's or complaining witness's sexual behavior  
 166 with respect to the defendant if it supports an inference that the accused could have

167 reasonably believed that the complaining witness consented to the conduct complained  
 168 of in the prosecution;

169 (3) Evidence of specific instances of a victim's or complaining witness's sexual behavior  
 170 with respect to the defendant or another person if offered by the prosecutor; and

171 (4) Evidence whose exclusion would violate the defendant's constitutional rights.

172 (c) The procedure for introducing evidence as described in subsection (b) of this Code  
 173 section shall be as follows:

174 ~~(1) At the time the defense seeks to introduce evidence which would be covered by~~  
 175 ~~subsection (b) of this Code section, the defense shall notify the court of such intent,~~  
 176 ~~whereupon the court shall conduct an in camera hearing to examine the accused's offer~~  
 177 ~~of proof; If a party intends to offer evidence under subsection (b), the party must:~~

178 (A) File a motion that specifically describes the evidence and states the purpose for  
 179 which it is to be offered; and

180 (B) Do so at least three days before trial unless the court, for good cause, sets a  
 181 different date; and

182 ~~(2) At the conclusion of the hearing, if the court finds that any of the evidence introduced~~  
 183 ~~at the hearing is admissible under subsection (b) of this Code section or is so highly~~  
 184 ~~material that it will substantially support a conclusion that the accused reasonably~~  
 185 ~~believed that the complaining witness consented to the conduct complained of and that~~  
 186 ~~justice mandates the admission of such evidence, the court shall by order state what~~  
 187 ~~evidence may be introduced by the defense at the trial of the case and in what manner the~~  
 188 ~~evidence may be introduced; and~~

189 ~~(3)~~(2) Before admitting the evidence under this Code section, the court shall conduct an  
 190 in camera hearing to examine the merits of the motion ~~The defense may then introduce~~  
 191 ~~evidence pursuant to the order of the court."~~

192 **SECTION 6.**

193 Said title is further amended by revising Code Section 24-8-820, relating to testimony as to  
 194 child's description of sexual contact or physical abuse, as follows:

195 "24-8-820.

196 (a) A statement made by a child younger than 16 years of age describing any act of sexual  
 197 contact or physical abuse performed with or on such child by another or with or on another  
 198 in the presence of such child shall be admissible in evidence by the testimony of the person  
 199 to whom made if the proponent of such statement provides notice to the adverse party prior  
 200 to trial of the intention to use such out-of-court statement and such child testifies at the  
 201 trial, unless the adverse party forfeits or waives such child's testimony as provided in this  
 202 title, and, at the time of the testimony regarding the out-of-court statements, the person to

203 whom the child made such statement is subject to cross-examination regarding the  
 204 out-of-court statements.  
 205 (b) This Code section shall apply to any motion made or hearing or trial commenced on  
 206 or after the effective date of this subsection."

207 **SECTION 7.**

208 Code Section 31-7-12.1 of the Official Code of Georgia Annotated, relating to unlicensed  
 209 personal care homes, is amended by revising subsection (g) and by adding a new subsection  
 210 to read as follows:

211 "(g) Upon the designation by the department and with the consent of any local or state law  
 212 enforcement agency, and subject to a written memorandum of understanding between the  
 213 department and such agencies, Georgia Peace Officer Standards and Training certified  
 214 investigators of such law enforcement agencies may act as agents of the department in  
 215 conducting inspections of unlicensed personal care homes required to be licensed under  
 216 this chapter. Such investigations shall be limited to instances where a law enforcement  
 217 agency is performing law enforcement duties and has consent or a warrant to enter the  
 218 home. Law enforcement agencies shall not be authorized to recoup any of the costs of  
 219 inspections performed pursuant to this subsection from the department.

220 (h) Any person who owns or operates a personal care home in violation of subsection (b)  
 221 of Code Section 31-7-12 shall be guilty of a misdemeanor for a first violation, unless such  
 222 violation is in conjunction with abuse, neglect, or exploitation as defined in Code Section  
 223 ~~30-5-3~~ a violation of Article 8 of Chapter 5 of Title 16, in which case such person shall be  
 224 guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than  
 225 one nor more than five years. Upon conviction for a second or subsequent such violation,  
 226 such person shall be guilty of a felony and, upon conviction, shall be punished by  
 227 imprisonment for not less than one nor more than ten years."

228 **SECTION 8.**

229 Section 3 of this Act shall apply to offenses occurring on or after the effective date of this  
 230 Act. Sections 4 and 5 of this Act shall apply to any motion made or hearing or trial  
 231 commenced on or after the effective date of this Act.

232 **SECTION 9.**

233 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 234 without such approval.

235

**SECTION 10.**

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