

The House Committee on Judiciary offers the following substitute to HB 78:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16, Code Section 24-13-130, Chapter 5 of Title 30, and Article 4 of Chapter
2 8 of Title 31 of the Official Code of Georgia Annotated, relating to crimes and offenses,
3 when depositions to preserve testimony in criminal proceedings may be taken, protection of
4 disabled adults and elder persons, and reporting abuse or exploitation of residents in
5 long-term care facilities, respectively, so as to expand protection of disabled adults and elder
6 persons; to provide for and revise definitions; to change provisions relating to cruelty to a
7 person 65 years of age or older; to prohibit exploitation of disabled adults, elder persons, and
8 residents; to provide for exceptions to criminal liability; to provide for investigatory powers;
9 to expand the right to take a deposition in criminal proceedings under certain circumstances;
10 to apply provisions relating to the protection of elder persons from exploitation to elder
11 persons who are residents in long-term care facilities; to expand reporting requirements for
12 persons in need of protective services and for reporting abuse or exploitation in long-term
13 care facilities; to expand the cooperative development of certain education and training
14 programs; to move relevant criminal penalties from Title 30 into Title 16; to amend Code
15 Section 19-7-5 of the Official Code of Georgia Annotated, relating to reporting of child
16 abuse, so as to include physician assistants as mandatory reporters; to amend Code Section
17 17-17-3, Title 31, Chapter 3 of Title 35, and Code Sections 42-8-63.1 and 49-2-14.1 of the
18 Official Code of Georgia Annotated, relating to definitions, health, the Georgia Bureau of
19 Investigation, discharging disqualifying individuals from employment, and records check
20 requirements for licensing certain child welfare agencies, respectively, so as to provide for
21 conforming cross-references; to provide for related matters; to repeal conflicting laws; and
22 for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 PART I
 25 ELDER PROTECTION MODERNIZATION
 26 SECTION 1-1.

27 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 28 amended by revising Article 8 of Chapter 5, relating to the protection of elder persons, as
 29 follows:

30 "ARTICLE 8

31 16-5-100.

32 As used in this article, the term:

33 (1) 'Alzheimer's disease' means a progressive, degenerative disease or condition that
 34 attacks the brain and results in impaired memory, thinking, and behavior.

35 (2) 'Dementia' means:

36 (A) An irreversible global loss of cognitive function causing evident intellectual
 37 impairment which always includes memory loss, without alteration of state of
 38 consciousness, as diagnosed by a physician, and is severe enough to interfere with work
 39 or social activities, or both, and to require at least intermittent care or supervision; or

40 (B) The comatose state of an adult resulting from any head injury.

41 (3) 'Disabled adult' means a person 18 years of age or older who is mentally or physically
 42 incapacitated or has Alzheimer's disease or dementia.

43 (4) 'Elder person' means a person 65 years of age or older.

44 (5) 'Essential services' means social, medical, psychiatric, or legal services necessary to
 45 safeguard a disabled adult's, elder person's, or resident's rights and resources and to
 46 maintain the physical and mental well-being of such person. Such services may include,
 47 but not be limited to, the provision of medical care for physical and mental health needs,
 48 assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter,
 49 and protection from health and safety hazards.

50 (6) 'Exploit' means illegally or improperly using a disabled adult or elder person or that
 51 person's resources through undue influence, coercion, harassment, duress, deception, false
 52 representation, false pretense, or other similar means for one's own or another person's
 53 profit or advantage.

54 (7) 'Long-term care facility' means any skilled nursing facility, intermediate care home,
 55 assisted living community, community living arrangement, or personal care home subject
 56 to regulation and licensure by the Department of Community Health.

57 (8) 'Resident' means any person who is receiving treatment or care in any long-term care
 58 facility.

59 (9) 'Sexual abuse' means the coercion for the purpose of self-gratification by a guardian
 60 or other person supervising the welfare or having immediate charge, control, or custody
 61 of a disabled adult, elder person, or resident to engage in any of the following conduct:

62 (A) Lewd exhibition of the genitals or pubic area of any person;

63 (B) Flagellation or torture by or upon a person who is unclothed or partially unclothed;

64 (C) Condition of being fettered, bound, or otherwise physically restrained on the part
 65 of a person who is unclothed or partially clothed unless physical restraint is medically
 66 indicated;

67 (D) Physical contact in an act of sexual stimulation or gratification with any person's
 68 unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

69 (E) Defecation or urination for the purpose of sexual stimulation of the viewer; or

70 (F) Penetration of the vagina or rectum by any object except when done as part of a
 71 recognized medical or nursing procedure.

72 ~~16-5-100:~~ 16-5-101.

73 (a) A guardian or other person supervising the welfare of or having immediate charge,
 74 control, or custody of a person who is 65 years of age or older disabled adult, elder person,
 75 or resident commits the offense of cruelty to a ~~person who is 65 years of age or older~~
 76 disabled adult, elder person, or resident when the person willfully deprives a ~~person who~~
 77 ~~is 65 years of age or older~~ disabled adult, elder person, or resident of health care, shelter,
 78 or necessary sustenance to the extent that the health or well-being of a ~~person who is 65~~
 79 ~~years of age or older~~ such person is jeopardized or willfully inflicts physical pain, physical
 80 injury, sexual abuse, mental anguish, unreasonable confinement, or the willful deprivation
 81 of essential services to a disabled adult, elder person, or resident.

82 (b) The provisions of this Code section shall not apply to a physician nor any person acting
 83 under a physician's direction nor to a hospital, ~~skilled nursing facility,~~ hospice, or long-term
 84 care facility, nor any agent or employee thereof who is in good faith ~~following a course of~~
 85 ~~treatment developed in accordance with accepted medical standards~~ acting within the scope
 86 of his or her employment or agency or who is acting in good faith in accordance with a
 87 living will, a durable power of attorney for health care, an advance directive for health care,
 88 an order not to resuscitate, or the instructions of the patient or the patient's lawful surrogate
 89 decision maker, nor shall the provisions of this Code section require any physician, any
 90 institution licensed in accordance with Chapter 7 of Title 31, or any employee or agent
 91 thereof to provide ~~health care~~ essential services or shelter to any person in the absence of
 92 another legal obligation to do so.

93 ~~(b.1)(c)~~ The provisions of this Code section shall not apply to a guardian or other person
 94 supervising the welfare of or having immediate charge, ~~or control, or custody~~ of a ~~person~~
 95 ~~who is 65 years of age or older~~ disabled adult, elder person, or resident who in good faith
 96 provides treatment by spiritual means alone through prayer for the person's physical or
 97 mental condition, in lieu of medical treatment, in accordance with the practices of and
 98 written notarized consent of the person.

99 ~~(c)(d)~~ A person ~~convicted of~~ who commits the offense of cruelty to a ~~person who is 65~~
 100 ~~years of age or older as provided in this Code section~~ disabled adult, elder person, or
 101 resident of a long-term care facility, upon conviction, shall be punished by imprisonment
 102 for not less than one nor more than 20 years, a fine of not more than \$50,000.00, or both.

103 16-5-102.

104 (a) Any person who knowingly and willfully exploits a disabled adult, elder person, or
 105 resident shall be guilty of a felony and, upon conviction, shall be punished by
 106 imprisonment for not less than one nor more than 20 years, a fine of not more than
 107 \$50,000.00, or both.

108 (b) Any person who threatens, intimidates, or attempts to intimidate a disabled adult, elder
 109 person, or resident who is the subject of a report made pursuant to Chapter 5 of Title 30 or
 110 Article 4 of Chapter 8 of Title 31, a witness, or any other person cooperating with an
 111 investigation conducted pursuant to this Code section shall be guilty of a misdemeanor of
 112 a high and aggravated nature.

113 (c) Any person who willfully and knowingly obstructs or in any way impedes an
 114 investigation conducted pursuant to Chapter 5 of Title 30 or Article 4 of Chapter 8 of Title
 115 31, upon conviction, shall be guilty of a misdemeanor of a high and aggravated nature.

116 16-5-103.

117 An owner, officer, administrator, board member, employee, or agent of a long-term care
 118 facility shall not be held criminally liable for the actions of another person who is convicted
 119 pursuant to this article unless such owner, officer, administrator, board member, employee,
 120 or agent has failed in his or her duty to provide essential services to a disabled adult, elder
 121 person, or resident.

122 16-5-104.

123 This article shall be cumulative and supplemental to any other law of this state."

124 **SECTION 1-2.**

125 Said title is further amended by revising subsection (a) of Code Section 16-9-108, relating
 126 to investigative and subpoena powers of district attorney and the Attorney General, as
 127 follows:

128 "(a) In any investigation of a violation of this article or any investigation of a violation of
 129 Code Section 16-12-100, 16-12-100.1, 16-12-100.2, 16-5-90, Article 8 of Chapter 5 of this
 130 title, or Article 8 of ~~Chapter 9 of Title 16~~ this chapter involving the use of a computer in
 131 furtherance of the act, the Attorney General or any district attorney shall have the power
 132 to administer oaths; to call any party to testify under oath at such investigation; to require
 133 the attendance of witnesses and the production of books, records, and papers; and to take
 134 the depositions of witnesses. The Attorney General or any such district attorney is
 135 authorized to issue a subpoena for any witness or a subpoena to compel the production of
 136 any books, records, or papers."

137 **SECTION 1-3.**

138 Said title is further amended by revising subsection (a) of Code Section 16-9-109, relating
 139 to disclosures by service providers pursuant to investigations, as follows:

140 "(a) Any law enforcement unit, the Attorney General, or any district attorney who is
 141 conducting an investigation of a violation of this article or an investigation of a violation
 142 of Code Section 16-12-100, 16-12-100.1, 16-12-100.2, or 16-5-90, Article 8 of Chapter 5
 143 of this title, or Article 8 of this chapter involving the use of a computer, cellular telephone,
 144 or any other electronic device used in furtherance of the act may require the disclosure by
 145 a provider of electronic communication service or remote computing service of the
 146 contents of a wire or electronic communication that is in electronic storage in an electronic
 147 communications system for 180 days or less pursuant to a search warrant issued under the
 148 provisions of Article 2 of Chapter 5 of Title 17 by a court with jurisdiction over the offense
 149 under investigation. Such court may require the disclosure by a provider of electronic
 150 communication service or remote computing service of the contents of a wire or electronic
 151 communication that has been in electronic storage in an electronic communications system
 152 for more than 180 days as set forth in subsection (b) of this Code section."

153 **SECTION 1-4.**

154 Code Section 24-13-130 of the Official Code of Georgia Annotated, relating to when
 155 depositions to preserve testimony in criminal proceedings may be taken, is amended by
 156 revising subsections (b) and (c) as follows:

157 "(b) The court shall not order the taking of the witness's testimony, except as provided in
 158 paragraph (2) of subsection (a) of this Code section, unless it appears to the satisfaction of
 159 the court that the testimony of the witness is material to the proceeding and the witness:
 160 (1) Is in imminent danger of death or great bodily harm;
 161 (2) Has been threatened with death or great bodily harm because of the witness's status
 162 as a potential witness in a criminal trial or proceeding;
 163 (3) Is about to leave this state, and there are reasonable grounds to believe that such
 164 witness will be unable to attend ~~the~~ a criminal trial or proceeding;
 165 (4) Is so sick or infirm as to afford reasonable grounds to believe that such witness will
 166 be unable to ~~attend the~~ testify as a witness at a criminal trial or proceeding; ~~or~~
 167 (5) Is being detained as a material witness, and there are reasonable grounds to believe
 168 that the witness will flee if released from detention; or
 169 (6) Is 72 years of age or older.

170 (c) A motion to take a deposition of a material witness, or a physician as provided in
 171 paragraph (2) of subsection (a) of this Code section, shall be verified and shall state:
 172 (1) The nature of the offense charged;
 173 (2) The status of the criminal proceedings;
 174 (3) The name of the witness and an address in Georgia where the witness may be
 175 contacted unless, for good cause shown, the court allows an exception to this paragraph;
 176 (4) That the testimony of the witness is material to the proceeding or that the witness is
 177 a physician as provided in paragraph (2) of subsection (a) of this Code section; and
 178 (5) The basis for taking the deposition as provided in subsection (b) of this Code
 179 section."

180 **SECTION 1-5.**

181 Chapter 5 of Title 30 of the Official Code of Georgia Annotated, relating to protection of
 182 disabled adults and elder persons, is amended by revising Code Section 30-5-3, relating to
 183 definitions for the chapter, as follows:

184 "30-5-3.

185 As used in this chapter, the term:

- 186 (1) 'Abuse' means the willful infliction of physical pain, physical injury, sexual abuse,
 187 mental anguish, unreasonable confinement, or the willful deprivation of essential services
 188 to a disabled adult or elder person.
- 189 (2) 'Caretaker' means a person who has the responsibility for the care of a disabled adult
 190 or elder person as a result of family relationship, contract, voluntary assumption of that
 191 responsibility, or by operation of law.

192 ~~(3) 'Court' means the probate court for the county of residence of the disabled adult or~~
 193 ~~elder person or the county in which such person is found. In any case in which the judge~~
 194 ~~of the probate court is unable to hear a case brought under this chapter within the time~~
 195 ~~required for such hearing, such judge shall appoint a person to serve and exercise all the~~
 196 ~~jurisdiction of the probate court in such case. Any person so appointed shall be a member~~
 197 ~~of the State Bar of Georgia and be otherwise qualified for his or her duties by training and~~
 198 ~~experience. Such appointment may be made on a case-by-case basis or by making a~~
 199 ~~standing appointment of one or more persons. Any person receiving such standing~~
 200 ~~appointment shall serve at the pleasure of the judge making the appointment or said~~
 201 ~~judge's successor in office to hear such cases if and when necessary. The compensation~~
 202 ~~of a person so appointed shall be as agreed upon by the judge who makes the appointment~~
 203 ~~and the person appointed, with the approval of the governing authority of the county for~~
 204 ~~which such person is appointed, and shall be paid from the county funds of such county.~~
 205 ~~All fees collected for the services of such appointed person shall be paid into the general~~
 206 ~~funds of the county served.~~

207 ~~(4)~~(3) 'Department' means the Department of Human Services.

208 ~~(5)~~(4) 'Director' means the director of the Division of Aging Services of the Department
 209 of Human Services, or the director's designee.

210 ~~(6)~~(5) 'Disabled adult' means a person 18 years of age or older who is not a resident of
 211 a long-term care facility, as defined in Article 4 of Chapter 8 of Title 31, but who is
 212 mentally or physically incapacitated or has Alzheimer's disease, as defined in Code
 213 Section 31-8-180, or dementia, as defined in Code Section ~~49-6-72~~ 16-5-100.

214 ~~(7) 'Disabled adult in need of protective services' means a disabled adult who is subject~~
 215 ~~to abuse, neglect, or exploitation as a result of that adult's mental or physical incapacity.~~

216 ~~(7.1)~~(6) 'Elder person' means a person 65 years of age or older who is not a resident of
 217 a long-term care facility as defined in Article 4 of Chapter 8 of Title 31.

218 ~~(8)~~(7) 'Essential services' means social, medical, psychiatric, or legal services necessary
 219 to safeguard the disabled adult's or elder person's rights and resources and to maintain the
 220 physical and mental well-being of such person. These services shall include, but not be
 221 limited to, the provision of medical care for physical and mental health needs, assistance
 222 in personal hygiene, food, clothing, adequately heated and ventilated shelter, and
 223 protection from health and safety hazards but shall not include the taking into physical
 224 custody of a disabled adult or elder person without that person's consent.

225 ~~(9)~~(8) 'Exploitation' means the illegal or improper use of a disabled adult or elder person
 226 or that person's resources through undue influence, coercion, harassment, duress,
 227 deception, false representation, false pretense, or other similar means for one's own or
 228 another's profit or advantage.

229 ~~(10)~~(9) 'Neglect' means the absence or omission of essential services to the degree that
 230 it harms or threatens with harm the physical or emotional health of a disabled adult or
 231 elder person.

232 ~~(11)~~(10) 'Protective services' means services necessary to protect a disabled adult or elder
 233 person from abuse, neglect, or exploitation. Such services shall include, but not be
 234 limited to, evaluation of the need for services and mobilization of essential services on
 235 behalf of a disabled adult or elder person.

236 (11) 'Sexual abuse' means the coercion for the purpose of self-gratification by a guardian
 237 or other person supervising the welfare or having immediate charge, control, or custody
 238 of a disabled adult or elder person to engage in any of the following conduct:

239 (A) Lewd exhibition of the genitals or pubic area of any person;

240 (B) Flagellation or torture by or upon a person who is unclothed or partially unclothed;

241 (C) Condition of being fettered, bound, or otherwise physically restrained on the part
 242 of a person who is unclothed or partially clothed unless physical restraint is medically
 243 indicated;

244 (D) Physical contact in an act of sexual stimulation or gratification with any person's
 245 unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

246 (E) Defecation or urination for the purpose of sexual stimulation of the viewer; or

247 (F) Penetration of the vagina or rectum by any object except when done as part of a
 248 recognized medical or nursing procedure."

249 **SECTION 1-6.**

250 Said chapter is further amended by revising subsection (a) and paragraph (1) of subsection
 251 (b) and adding a new subsection to Code Section 30-5-4, relating to reporting of the need for
 252 protective services, to read as follows:

253 "(a)(1)(A) The following persons ~~Any physician, osteopath, intern, resident, other~~
 254 ~~hospital or medical personnel, dentist, psychologist, chiropractor, podiatrist,~~
 255 ~~pharmacist, physical therapist, occupational therapist, licensed professional counselor,~~
 256 ~~nursing personnel, social work personnel, day-care personnel, coroner, medical~~
 257 ~~examiner, employee of a public or private agency engaged in professional health related~~
 258 ~~services to elder persons or disabled adults, or law enforcement personnel having~~
 259 ~~reasonable cause to believe that a disabled adult or elder person has had a physical~~
 260 ~~injury or injuries inflicted upon such disabled adult or elder person~~ been the victim of
 261 abuse, other than by accidental means, or has been neglected or exploited shall report
 262 or cause reports to be made in accordance with the provisions of this Code section:

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

- 265 (ii) Physical therapists;
 266 (iii) Occupational therapists;
 267 (iv) Day-care personnel;
 268 (v) Coroners;
 269 (vi) Medical examiners;
 270 (vii) Emergency medical services personnel, as such term is defined in Code Section
 271 31-11-49;
 272 (viii) Any person who has been certified as an emergency medical technician, cardiac
 273 technician, paramedic, or first responder pursuant to Chapter 11 of Title 31;
 274 (ix) Employees of a public or private agency engaged in professional health related
 275 services to elder persons or disabled adults; and
 276 (x) Clergy members.
- 277 (B) ~~Any~~ Except as provided in this paragraph, any employee of a financial institution,
 278 as defined in Code Section 7-1-4, having reasonable cause to believe that a disabled
 279 adult or elder person has been exploited shall report or cause reports to be made in
 280 accordance with the provisions of this Code section; provided, however, that this
 281 obligation shall not apply to any employee of a financial institution while that employee
 282 is acting as a fiduciary, as defined in Code Section 7-1-4, but only for such assets that
 283 the employee is holding or managing in a fiduciary capacity.
- 284 (C) When the person having a reasonable cause to believe that a disabled adult or elder
 285 person is in need of protective services performs services as a member of the staff of
 286 a hospital, social agency, financial institution, or similar facility, such person shall
 287 notify the person in charge of the facility and such person or that person's designee shall
 288 report or cause reports to be made in accordance with the provisions of this Code
 289 section.
- 290 (2) Any other person having a reasonable cause to believe that a disabled adult or elder
 291 person is in need of protective services; or has been the victim of abuse, neglect, or
 292 exploitation may report such information as provided in this Code section.
- 293 (b)(1) A report that a disabled adult or elder person who is not a resident of a long-term
 294 care facility as defined in Code Section ~~31-8-80~~ 31-8-81 is in need of protective services
 295 or has been the victim of abuse, neglect, or exploitation shall be made to an adult
 296 protection agency providing protective services; as designated by the department ~~or, if~~
 297 ~~such agency is unavailable, and~~ to an appropriate law enforcement agency or prosecuting
 298 attorney. If a report of a disabled adult or elder person abuse or exploitation is made to
 299 an adult protection agency or independently discovered by the agency ~~and the agency has~~
 300 ~~reasonable cause to believe such report is true,~~ then the agency shall immediately notify
 301 the appropriate law enforcement agency or prosecuting attorney. If the disabled adult or

302 elder person is a resident of a long-term care facility as defined in Code Section ~~31-8-80~~
 303 31-8-81, a report shall be made in accordance with Article 4 of Chapter 8 of Title 31. If
 304 a report made in accordance with the provisions of this Code section alleges that the
 305 abuse or exploitation occurred within a long-term care facility, such report shall be
 306 investigated in accordance with Articles 3 and 4 of Chapter 8 of Title 31."

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

319 SECTION 1-7.

320 Said chapter is further amended by revising Code Section 30-5-5, relating to investigation
 321 of reports of need for protective services, by adding new subsections to read as follows:

322 "(i) In any case in which the judge of the court is unable to hear a case brought under this
 323 chapter within the time required for such hearing, such judge shall appoint a person to
 324 serve and exercise all the jurisdiction of the court in such case. Any person so appointed
 325 shall be a member of the State Bar of Georgia and be otherwise qualified for his or her
 326 duties by training and experience. Such appointment may be made on a case-by-case basis
 327 or by making a standing appointment of one or more persons. Any person receiving such
 328 standing appointment shall serve at the pleasure of the judge making the appointment or
 329 said judge's successor in office to hear such cases if and when necessary. The
 330 compensation of a person so appointed shall be as agreed upon by the judge who makes the
 331 appointment and the person appointed, with the approval of the governing authority of the
 332 county for which such person is appointed, and shall be paid from the county funds of such
 333 county. All fees collected for the services of such appointed person shall be paid into the
 334 general funds of the county served.

335 (j) As used in this Code section, the term 'court' means the probate court for the county of
 336 residence of the disabled adult or elder person or the county in which such person is found."

337 **SECTION 1-8.**

338 Said chapter is further amended by revising Code Section 30-5-7, relating to confidentiality
 339 of public records, as follows:

340 "30-5-7.

341 All records pertaining to the abuse, neglect, or exploitation of disabled adults or elder
 342 persons in the custody of the department shall be confidential; and access thereto by
 343 persons other than the department, the director, or the district attorney shall only be by
 344 valid subpoena or order of any court of competent jurisdiction. Nothing in this Code
 345 section shall be construed to deny ~~state~~ agencies participating in joint investigations at the
 346 request of and with the department, or conducting separate investigations of abuse or
 347 exploitation within an agency's scope of authority, or ~~to deny~~ law enforcement personnel
 348 who are conducting an investigation into any criminal offense in which an a disabled adult
 349 or elder person is a victim from having access to such records."

350 **SECTION 1-9.**

351 Said chapter is further amended by revising Code Section 30-5-8, relating to criminal
 352 offenses and penalties, as follows:

353 "30-5-8.

354 ~~(a)(1)(A) In addition to any other provision of law, the abuse or exploitation of any~~
 355 ~~disabled adult or elder person shall be unlawful.~~

356 ~~(B) In addition to any other provision of law, the neglect of any disabled adult or elder~~
 357 ~~person by a guardian, caretaker, or other person supervising the welfare of or having~~
 358 ~~immediate charge or custody of such disabled adult or elder person shall be unlawful.~~

359 ~~(2) In addition to any other provision of law, it shall be unlawful for a person to act with~~
 360 ~~the specific intent to abuse, neglect, or commit exploitation of any disabled adult. For~~
 361 ~~purposes of this paragraph only, the term 'disabled adult' means a person 18 years of age~~
 362 ~~or older who is:~~

363 ~~(A) A resident of a long-term care facility, as defined in Article 4 of Chapter 8 of Title~~
 364 ~~31; and~~

365 ~~(B) Mentally or physically incapacitated or has Alzheimer's disease, as defined in Code~~
 366 ~~Section 31-8-180, or dementia, as defined in Code Section 49-6-72.~~

367 ~~An owner, officer, administrator, or board member of a long-term care facility shall not~~
 368 ~~be held criminally liable for the actions of a person who is convicted pursuant to this~~
 369 ~~paragraph. Nothing in this paragraph shall be construed to preempt any other law or to~~
 370 ~~deny to any individual any rights or remedies which are provided under any other law.~~

371 ~~(3) Except as otherwise provided in Title 16, any person violating the provisions of this~~
 372 ~~subsection shall be guilty of a felony and, upon conviction, shall be punished by~~
 373 ~~imprisonment for not less than one nor more than five years.~~

374 ~~(b)~~(a)(1) It shall be unlawful for any person or official required by paragraph (1) of
 375 subsection (a) of Code Section 30-5-4 to report a case of disabled adult or elder person
 376 abuse to fail knowingly and willfully to make such report.

377 (2) Any person violating the provisions of this ~~subsection~~ Code section shall be guilty
 378 of a misdemeanor.

379 ~~(c)~~(b) Any violation of this Code section shall constitute a separate offense."

380 **SECTION 1-10.**

381 Said chapter is further amended by revising Code Section 30-5-10, relating to cooperative
 382 effort in development of programs relating to abuse and exploitation of persons 65 years of
 383 age or older, as follows:

384 "30-5-10.

385 The ~~Department of Human Services~~ department, the Georgia Peace Officer Standards and
 386 Training Council, the Prosecuting Attorneys' Council of the State of Georgia, and the
 387 Institute of Continuing Judicial Education shall develop programs for the education and
 388 training of social services, criminal justice, and judicial professionals concerning the abuse
 389 and exploitation of ~~persons who are 65 years of age or older~~ disabled adults, elder persons,
 390 and residents of long-term care facilities, as defined in Code Section 16-5-100. Said
 391 agencies, together with any other agency of this state which is involved in the investigation
 392 of the abuse or exploitation of ~~persons who are 65 years of age or older~~ disabled adults,
 393 elder persons, and residents of long-term care facilities, as defined in Code Section
 394 16-5-100, are directed to cooperate in the development of such training programs to the
 395 extent allowable under Article I, Section II, Paragraph III of the Constitution of this state."

396 **SECTION 1-11.**

397 Article 4 of Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to
 398 reporting abuse or exploitation of residents in long-term care facilities, is amended by
 399 revising paragraph (2) of Code Section 31-8-81, relating to definitions for the article, as
 400 follows:

401 "(2) 'Exploitation' means ~~an unjust~~ the illegal or improper use of ~~another person or the~~
 402 ~~person's property~~ a resident or the resident's resources through undue influence, coercion,
 403 harassment, duress, deception, false representation, false pretense, or other similar means
 404 for one's own or another's profit or advantage."

405 **SECTION 1-12.**

406 Said article is further amended by revising Code Section 31-8-82, relating to reporting abuse
 407 or exploitation in long-term care facilities, as follows:

408 "31-8-82.

409 (a) Any:

410 ~~(1) Administrator, manager, physician, nurse, nurse's aide, orderly, or other employee~~
 411 ~~in a hospital or facility;~~

412 ~~(2) Medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, social~~
 413 ~~worker, coroner, clergyman, police officer, pharmacist, physical therapist, or~~
 414 ~~psychologist; or~~

415 ~~(3) Employee of a public or private agency engaged in professional services to residents~~
 416 ~~or responsible for inspection of long-term care facilities~~

417 who has knowledge of the following people who have reasonable cause to believe that any
 418 resident or former resident has been abused or exploited while residing in a long-term care
 419 facility shall immediately make a report as described in subsection ~~(c)~~ (d) of this Code
 420 section by telephone or in person to the department. ~~In the event that an immediate report~~
 421 ~~to the department is not possible, the person~~ and shall make the report to the appropriate
 422 law enforcement agency or prosecuting attorney:

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

425 (2) Physical therapists;

426 (3) Occupational therapists;

427 (4) Day-care personnel;

428 (5) Coroners;

429 (6) Medical examiners;

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

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

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

435 (10) Clergy members.

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

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

- 442 ~~(e)~~(d) A report of suspected abuse or exploitation shall include the following:
- 443 (1) The name and address of the person making the report unless such person is not
- 444 required to make a report;
- 445 (2) The name and address of the resident or former resident;
- 446 (3) The name and address of the long-term care facility;
- 447 (4) The nature and extent of any injuries or the condition resulting from the suspected
- 448 abuse or exploitation;
- 449 (5) The suspected cause of the abuse or exploitation; and
- 450 (6) Any other information which the reporter believes might be helpful in determining
- 451 the cause of the resident's injuries or condition and in determining the identity of the
- 452 person or persons responsible for the abuse or exploitation.
- 453 ~~(d) Upon receipt of a report of abuse or exploitation, the department may notify the~~
- 454 ~~appropriate law enforcement agency. In the event a report is made directly to a law~~
- 455 ~~enforcement agency, under subsection (a) or (b) of this Code section, that agency shall~~
- 456 ~~immediately notify the department.~~
- 457 (e) The department shall maintain accurate records which shall include all reports of abuse
- 458 or exploitation, the results of all investigations and administrative or judicial proceedings,
- 459 and a summary of actions taken to assist the resident.
- 460 (f) Any suspected abuse or exploitation which is required to be reported by any person
- 461 pursuant to this Code section shall be reported notwithstanding that the reasonable cause
- 462 to believe such abuse or exploitation has occurred or is occurring is based in whole or in
- 463 part upon any communication to that person which is otherwise made privileged or
- 464 confidential by law; provided, however, that a member of the clergy shall not be required
- 465 to report such matters confided to him or her solely within the context of confession or
- 466 other similar communication required to be kept confidential under church doctrine or
- 467 practice. When a clergy member receives information about abuse or exploitation from
- 468 any other source, the clergy member shall comply with the reporting requirements of this
- 469 Code section, even though the clergy member may have also received a report of such
- 470 matters from the confession of the perpetrator."

471 **SECTION 1-13.**

472 Said article is further amended by revising Code Section 31-8-86 relating to confidentiality,

473 as follows:

474 "31-8-86.

475 The identities of the resident, the alleged perpetrator, and persons making a report or

476 providing information or evidence shall not be disclosed to the public unless required to

477 be revealed in court proceedings or upon the written consent of the person whose identity

478 is to be revealed or as otherwise required by law. Upon the resident's or his or her
 479 representative's request, the department shall make information obtained in an abuse report
 480 or complaint and an investigation available to an allegedly abused or exploited resident or
 481 his or her representative for inspection or duplication, except that such disclosure shall be
 482 made without revealing the identity of any other resident, the person making the report, or
 483 persons providing information by name or inference. For the purpose of this Code section,
 484 the term 'representative' shall include any person authorized in writing by the resident or
 485 appointed by an appropriate court to act upon the resident's behalf. The term
 486 'representative' also shall include a family member of a deceased or physically or mentally
 487 impaired resident unable to grant authorization; provided, however, that such family
 488 members who do not have written or court authorization shall not be authorized by this
 489 Code section to receive the resident's health records as defined in Code Section 31-33-1.
 490 Nothing in this Code section shall be construed to deny agencies participating in joint
 491 investigations at the request of and with the department, or conducting separate
 492 investigations of abuse or exploitation within an agency's scope of authority, or law
 493 enforcement personnel who are conducting an investigation into any criminal offense in
 494 which a resident is a victim from having access to such records."

495 PART II

496 MANDATORY REPORTERS

497 SECTION 2-1.

498 Code Section 19-7-5 of the Official Code of Georgia Annotated, relating to reporting of child
 499 abuse, is amended by revising subparagraph (c)(1)(A), as follows:

500 "(A) Physicians licensed to practice medicine, physician assistants, interns, or
 501 residents;"

502 PART III

503 CROSS-REFERENCES

504 SECTION 3-1.

505 Code Section 17-17-3 of the Official Code of Georgia Annotated, relating to definitions for
 506 the "Crime Victims' Bill of Rights," is amended by revising paragraph (4) as follows:

507 "(4) 'Crime' means an act committed in this state which constitutes any violation of
 508 Chapter 5 of Title 16; Chapter 6 of Title 16; Article 1, 3, or 4 of Chapter 7 of Title 16;
 509 Article 1 or 2 of Chapter 8 of Title 16; Chapter 9 of Title 16; Part 3 of Article 3 of

510 Chapter 12 of Title 16; ~~Code Section 30-5-8~~; Code Section 40-6-393; Code Section
511 40-6-393.1; or Code Section 40-6-394."

512 **SECTION 3-2.**

513 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
514 subparagraphs (a)(2)(E) and (a)(2)(L) through (a)(2)(N) of Code Section 31-2-9, relating to
515 records check requirements for certain facilities under the Department of Community Health,
516 as follows:

517 "~~(E) A violation of Code Section 16-5-100, relating to cruelty to a person 65 years of~~
518 ~~age or older~~ Article 8 of Chapter 5 of Title 16;"

519 "~~(L) A violation of Code Section 16-8-41, relating to armed robbery;~~

520 ~~(M) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of~~
521 ~~a disabled adult or elder person;~~ or

522 ~~(N)~~(M) Any other offense committed in another jurisdiction that, if committed in this
523 state, would be deemed to be a crime listed in this paragraph without regard to its
524 designation elsewhere."

525 **SECTION 3-3.**

526 Said title is further amended by revising subparagraphs (N) and (O) of paragraph (2) of Code
527 Section 31-7-250, relating to definitions relative to facility licensing and employee records
528 checks for personal care homes, as follows:

529 "~~(N) A violation of Code Section 16-6-5.1, relating to sexual assault against a person~~
530 ~~in custody;~~

531 ~~(O) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of~~
532 ~~a disabled adult or elder person~~ Article 8 of Chapter 5 of Title 16;"

533 **SECTION 3-4.**

534 Said title is further amended by revising paragraph (2) of Code Section 31-7-350, relating
535 to definitions for nursing home employee record checks, as follows:

536 "(2) 'Crime' means commission of an offense which constitutes a felony with respect to
537 the following:

538 (A) A violation of Code Section 16-5-21, ~~relating to aggravated assault;~~

539 (B) A violation of Code Section 16-5-24, ~~relating to aggravated battery;~~

540 (C) A violation of Code Section 16-6-1, ~~relating to rape;~~

541 (D) A violation of Code Section 16-8-2, ~~relating to theft by taking;~~

542 (E) A violation of Code Section 16-8-3, ~~relating to theft by deception;~~

543 (F) A violation of Code Section 16-8-4, ~~relating to theft by conversion;~~

- 544 (G) A violation of Code Section 16-5-1, ~~relating to murder and felony murder;~~
 545 (H) A violation of Code Section 16-4-1, ~~relating to criminal attempt as it concerns~~
 546 ~~attempted murder;~~
 547 (I) A violation of Code Section 16-8-40, ~~relating to robbery;~~
 548 (J) A violation of Code Section 16-8-41, ~~relating to armed robbery;~~
 549 (K) A felony violation of Code Section 16-9-1;
 550 (L) A violation of Article 8 of Chapter 5 of Title 16;
 551 ~~(E)(M)~~ A violation of Chapter 13 of Title 16, ~~relating to controlled substances;~~ or
 552 ~~(M)(N)~~ Any other offense committed in another jurisdiction which, if committed in
 553 this state, would be deemed to be such a crime without regard to its designation
 554 elsewhere."

555 **SECTION 3-5.**

556 Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia
 557 Bureau of Investigation, is amended by revising paragraph (14) of subsection (a) of Code
 558 Section 35-3-4, relating to the powers and duties of the Georgia Bureau of Investigation, as
 559 follows:

560 "(14) Identify and investigate violations of ~~Code Section 30-5-8 or 16-5-100~~ Article 8
 561 of Chapter 5 of Title 16; and"

562 **SECTION 3-6.**

563 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section
 564 35-3-34.1, relating to circumstances when exonerated first offender's criminal record may
 565 be disclosed, as follows:

566 "(2) The request for information is an inquiry about a person who has applied for
 567 employment with a ~~nursing home, assisted living community, personal care home,~~
 568 long-term care facility as defined in Code Section 31-8-51 or a person or entity that offers
 569 day care for elderly persons and the person who is the subject of the inquiry to the center
 570 was prosecuted for the offense of sexual battery, incest, pimping, pandering, or a
 571 violation of ~~Code Section 30-5-8~~ Article 8 of Chapter 5 of Title 16; or"

572 **SECTION 3-7.**

573 Code Section 42-8-63.1 of the Official Code of Georgia Annotated, relating to discharging
 574 disqualifying individuals from employment, is amended by revising paragraph (3) of
 575 subsection (a) as follows:

576 "(3) The employment is with a ~~nursing home, assisted living community, personal care~~
 577 home, long-term care facility as defined in Code Section 31-8-51 or a person or entity

578 that offers day care for elderly persons and the defendant was discharged under this
 579 article after prosecution for the offense of sexual battery, incest, pimping, pandering, or
 580 a violation of ~~Code Section 30-5-8~~ Article 8 of Chapter 5 of Title 16; or"

581 **SECTION 3-8.**

582 Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to records check
 583 requirements for licensing certain child welfare agencies, is amended by revising
 584 subparagraphs (a)(2)(E) and (a)(2)(L) through (a)(2)(N) as follows:

585 "(E) A violation of ~~Code Section 16-5-100, relating to cruelty to a person 65 years of~~
 586 ~~age or older~~ Article 8 of Chapter 5 of Title 16;"

587 "(L) A violation of Code Section 16-8-41, ~~relating to armed robbery~~;

588 ~~(M) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of~~
 589 ~~a disabled adult or elder person~~; or

590 ~~(N)~~(M) Any other offense committed in another jurisdiction that, if committed in this
 591 state, would be deemed to be a crime listed in this paragraph without regard to its
 592 designation elsewhere."

593 **PART IV**

594 **REPEALER**

595 **SECTION 4-1.**

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