

SENATE SUBSTITUTE TO HB 78:

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend Title 16, Title 24, Chapter 5 of Title 30, and Article 4 of Chapter 8 of Title 31 of  
 2 the Official Code of Georgia Annotated, relating to crimes and offenses, evidence, protection  
 3 of disabled adults and elder persons, and reporting abuse or exploitation of residents in  
 4 long-term care facilities, respectively, so as to expand protection of disabled adults and elder  
 5 persons; to provide for and revise definitions; to change provisions relating to cruelty to a  
 6 person 65 years of age or older; to prohibit abuse, neglect, and exploitation of disabled  
 7 adults, elder persons, and residents; to provide for exceptions to criminal liability; to provide  
 8 for investigatory powers; to expand the right to take a deposition in criminal proceedings  
 9 under certain circumstances; to apply provisions relating to the protection of elder persons  
 10 from exploitation to elder persons who are residents in long-term care facilities; to expand  
 11 reporting requirements for persons in need of protective services and for reporting abuse or  
 12 exploitation in long-term care facilities; to expand the cooperative development of certain  
 13 education and training programs; to move relevant criminal penalties from Title 30 into Title  
 14 16; to amend Code Section 19-7-5 of the Official Code of Georgia Annotated, relating to  
 15 reporting of child abuse, so as to include physician assistants as mandatory reporters; to  
 16 change provisions relating to using a writing to refresh memory; 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~~ neglect to a ~~person who is 65 years of age or~~  
 76 ~~older disabled adult, elder person, or resident~~ when the person willfully deprives a person  
 77 ~~who is 65 years of age or older disabled adult, elder person, or resident~~ of health care,  
 78 shelter, or necessary sustenance to the extent that the health or well-being of a ~~person who~~  
 79 ~~is 65 years of age or older~~ such person is jeopardized.

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

91 ~~(b.1)(c)~~ (c) The provisions of this Code section shall not apply to a guardian or other person  
 92 supervising the welfare of or having immediate charge, or control, or custody of a person

93 ~~who is 65 years of age or older~~ disabled adult, elder person, or resident who in good faith  
 94 provides treatment by spiritual means alone through prayer for the person's physical or  
 95 mental condition, in lieu of medical treatment, in accordance with the practices of and  
 96 written notarized consent of the person.

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

102 16-5-102.

103 (a) Any person who knowingly and willfully exploits a disabled adult, elder person, or  
 104 resident, willfully inflicts physical pain, physical injury, sexual abuse, mental anguish, or  
 105 unreasonable confinement upon a disabled adult, elder person, or resident, or willfully  
 106 deprives of essential services a disabled adult, elder person, or resident shall be guilty of  
 107 a felony and, upon conviction, shall be punished by imprisonment for not less than one nor  
 108 more than 20 years, a fine of not more than \$50,000.00, or both.

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

114 (c) Any person who willfully and knowingly obstructs or in any way impedes an  
 115 investigation conducted pursuant to Chapter 5 of Title 30 or Article 4 of Chapter 8 of Title  
 116 31, upon conviction, shall be guilty of a misdemeanor of a high and aggravated nature.

117 16-5-103.

118 An owner, officer, administrator, board member, employee, or agent of a long-term care  
 119 facility shall not be held criminally liable for the actions of another person who is convicted  
 120 pursuant to this article unless such owner, officer, administrator, board member, employee,  
 121 or agent was a knowing and willful party to or conspirator to the abuse or neglect, as  
 122 defined in Code Section 30-5-3, or exploitation of a disabled adult, elder person, or  
 123 resident.

124 16-5-104.

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

126

**SECTION 1-2.**

127

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

128

129

130

131

132

133

134

135

136

137

138

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

139

**SECTION 1-3.**

140

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

141

142

143

144

145

146

147

148

149

150

151

152

153

154

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

155

**SECTION 1-4.**

156

Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by revising subsection (b) of Code Section 24-6-612, relating to writing used to refresh memory, as follows:

157

158

159

160

"(b) If a witness uses a writing to refresh his or her memory before testifying at trial and the court in its discretion determines it is necessary in the interests of justice, an adverse

161 party shall be entitled to have the writing produced at the trial, to inspect it, to  
 162 cross-examine the witness on such writing, and to introduce in evidence those portions of  
 163 such writing which relate to the testimony of the witness. If the writing used is protected  
 164 by the attorney-client privilege or as attorney work product under Code Section 9-11-26,  
 165 use of the writing to refresh recollection prior to ~~the trial~~ testifying shall not constitute a  
 166 waiver of that privilege or protection. If it is claimed that the writing contains matters not  
 167 related to the subject matter of the testimony, the court shall examine the writing in camera,  
 168 excise any portions of such writing not so related, and order delivery of the remainder of  
 169 such writing to the party entitled to such writing. Any portion withheld over objections  
 170 shall be preserved and made available to the appellate court in the event of an appeal. If  
 171 a writing is not produced or delivered pursuant to an order under this Code section, the  
 172 court shall make any order justice requires; provided, however, that in criminal  
 173 proceedings, when the prosecution elects not to comply, the order shall be one striking the  
 174 testimony or, if the court in its discretion determines that the interests of justice so require,  
 175 declaring a mistrial."

176 **SECTION 1-4A.**

177 Said title is further amended by revising subsections (b) and (c) of Code Section 24-13-130,  
 178 relating to when depositions to preserve testimony in criminal proceedings may be taken, as  
 179 follows:

180 "(b) The court shall not order the taking of the witness's testimony, except as provided in  
 181 paragraph (2) of subsection (a) of this Code section, unless it appears to the satisfaction of  
 182 the court that the testimony of the witness is material to the proceeding and the witness:

- 183 (1) Is in imminent danger of death or great bodily harm;
- 184 (2) Has been threatened with death or great bodily harm because of the witness's status  
 185 as a potential witness in a criminal trial or proceeding;
- 186 (3) Is about to leave this state, and there are reasonable grounds to believe that such  
 187 witness will be unable to attend ~~the~~ a criminal trial or proceeding;
- 188 (4) Is so sick or infirm as to afford reasonable grounds to believe that such witness will  
 189 be unable to ~~attend the~~ testify as a witness at a criminal trial or proceeding; ~~or~~
- 190 (5) Is being detained as a material witness, and there are reasonable grounds to believe  
 191 that the witness will flee if released from detention; or
- 192 (6) Is 72 years of age or older.

193 (c) A motion to take a deposition of a material witness, or a physician as provided in  
 194 paragraph (2) of subsection (a) of this Code section, shall be verified and shall state:

- 195 (1) The nature of the offense charged;
- 196 (2) The status of the criminal proceedings;

- 197 (3) The name of the witness and an address in Georgia where the witness may be  
 198 contacted unless, for good cause shown, the court allows an exception to this paragraph;  
 199 (4) That the testimony of the witness is material to the proceeding or that the witness is  
 200 a physician as provided in paragraph (2) of subsection (a) of this Code section; and  
 201 (5) The basis for taking the deposition as provided in subsection (b) of this Code  
 202 section."

203 **SECTION 1-5.**

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

207 "30-5-3.

208 As used in this chapter, the term:

209 (1) 'Abuse' means the willful infliction of physical pain, physical injury, sexual abuse,  
 210 mental anguish, unreasonable confinement, or the willful deprivation of essential services  
 211 to a disabled adult or elder person.

212 (2) 'Caretaker' means a person who has the responsibility for the care of a disabled adult  
 213 or elder person as a result of family relationship, contract, voluntary assumption of that  
 214 responsibility, or by operation of law.

215 ~~(3) 'Court' means the probate court for the county of residence of the disabled adult or~~  
 216 ~~elder person or the county in which such person is found. In any case in which the judge~~  
 217 ~~of the probate court is unable to hear a case brought under this chapter within the time~~  
 218 ~~required for such hearing, such judge shall appoint a person to serve and exercise all the~~  
 219 ~~jurisdiction of the probate court in such case. Any person so appointed shall be a member~~  
 220 ~~of the State Bar of Georgia and be otherwise qualified for his or her duties by training and~~  
 221 ~~experience. Such appointment may be made on a case-by-case basis or by making a~~  
 222 ~~standing appointment of one or more persons. Any person receiving such standing~~  
 223 ~~appointment shall serve at the pleasure of the judge making the appointment or said~~  
 224 ~~judge's successor in office to hear such cases if and when necessary. The compensation~~  
 225 ~~of a person so appointed shall be as agreed upon by the judge who makes the appointment~~  
 226 ~~and the person appointed, with the approval of the governing authority of the county for~~  
 227 ~~which such person is appointed, and shall be paid from the county funds of such county.~~  
 228 ~~All fees collected for the services of such appointed person shall be paid into the general~~  
 229 ~~funds of the county served.~~

230 ~~(4)~~(3) 'Department' means the Department of Human Services.

231 ~~(5)~~(4) 'Director' means the director of the Division of Aging Services of the Department  
 232 of Human Services, or the director's designee.

233 ~~(6)~~(5) 'Disabled adult' means a person 18 years of age or older who is not a resident of  
 234 a long-term care facility, as defined in Article 4 of Chapter 8 of Title 31, but who is  
 235 mentally or physically incapacitated or has Alzheimer's disease, as defined in Code  
 236 Section 31-8-180, or dementia, as defined in Code Section ~~49-6-72~~ 16-5-100.

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

239 ~~(7.1)~~(6) 'Elder person' means a person 65 years of age or older who is not a resident of  
 240 a long-term care facility as defined in Article 4 of Chapter 8 of Title 31.

241 ~~(8)~~(7) 'Essential services' means social, medical, psychiatric, or legal services necessary  
 242 to safeguard the disabled adult's or elder person's rights and resources and to maintain the  
 243 physical and mental well-being of such person. These services shall include, but not be  
 244 limited to, the provision of medical care for physical and mental health needs, assistance  
 245 in personal hygiene, food, clothing, adequately heated and ventilated shelter, and  
 246 protection from health and safety hazards but shall not include the taking into physical  
 247 custody of a disabled adult or elder person without that person's consent.

248 ~~(9)~~(8) 'Exploitation' means the illegal or improper use of a disabled adult or elder person  
 249 or that person's resources through undue influence, coercion, harassment, duress,  
 250 deception, false representation, false pretense, or other similar means for one's own or  
 251 another's profit or advantage.

252 ~~(10)~~(9) 'Neglect' means the absence or omission of essential services to the degree that  
 253 it harms or threatens with harm the physical or emotional health of a disabled adult or  
 254 elder person.

255 ~~(11)~~(10) 'Protective services' means services necessary to protect a disabled adult or elder  
 256 person from abuse, neglect, or exploitation. Such services shall include, but not be  
 257 limited to, evaluation of the need for services and mobilization of essential services on  
 258 behalf of a disabled adult or elder person.

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

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

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

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

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

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



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

272 **SECTION 1-6.**

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

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

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

288 (ii) Physical therapists;

289 (iii) Occupational therapists;

290 (iv) Day-care personnel;

291 (v) Coroners;

292 (vi) Medical examiners;

293 (vii) Emergency medical services personnel, as such term is defined in Code Section  
 294 31-11-49;

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

297 (ix) Employees of a public or private agency engaged in professional health related  
 298 services to elder persons or disabled adults; and

299 (x) Clergy members.

300 (B) Any ~~Except as provided in this paragraph, any~~ employee of a financial institution,  
 301 as defined in Code Section 7-1-4, having reasonable cause to believe that a disabled  
 302 adult or elder person has been exploited shall report or cause reports to be made in  
 303 accordance with the provisions of this Code section; provided, however, that this  
 304 obligation shall not apply to any employee of a financial institution while that employee

305 is acting as a fiduciary, as defined in Code Section 7-1-4, but only for such assets that  
 306 the employee is holding or managing in a fiduciary capacity.

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

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

316 (b)(1) A report that a disabled adult or elder person who is not a resident of a long-term  
 317 care facility as defined in Code Section ~~31-8-80~~ 31-8-81 is in need of protective services  
 318 or has been the victim of abuse, neglect, or exploitation shall be made to an adult  
 319 protection agency providing protective services; as designated by the department ~~or, if~~  
 320 ~~such agency is unavailable, and~~ to an appropriate law enforcement agency or prosecuting  
 321 attorney. If a report of a disabled adult or elder person abuse, neglect, or exploitation is  
 322 made to an adult protection agency or independently discovered by the agency ~~and the~~  
 323 ~~agency has reasonable cause to believe such report is true~~, then the agency shall  
 324 immediately notify the appropriate law enforcement agency or prosecuting attorney. If  
 325 the disabled adult or elder person is a resident of a long-term care facility as defined in  
 326 Code Section ~~31-8-80~~ 31-8-81, a report shall be made in accordance with Article 4 of  
 327 Chapter 8 of Title 31. If a report made in accordance with the provisions of this Code  
 328 section alleges that the abuse or exploitation occurred within a long-term care facility,  
 329 such report shall be investigated in accordance with Articles 3 and 4 of Chapter 8 of Title  
 330 31."

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

341 reporting requirements of this Code section, even though the clergy member may have also  
 342 received a report of such matters from the confession of the perpetrator."

343 **SECTION 1-7.**

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

346 "(i) In any case in which the judge of the court is unable to hear a case brought under this  
 347 chapter within the time required for such hearing, such judge shall appoint a person to  
 348 serve and exercise all the jurisdiction of the court in such case. Any person so appointed  
 349 shall be a member of the State Bar of Georgia and be otherwise qualified for his or her  
 350 duties by training and experience. Such appointment may be made on a case-by-case basis  
 351 or by making a standing appointment of one or more persons. Any person receiving such  
 352 standing appointment shall serve at the pleasure of the judge making the appointment or  
 353 said judge's successor in office to hear such cases if and when necessary. The  
 354 compensation of a person so appointed shall be as agreed upon by the judge who makes the  
 355 appointment and the person appointed, with the approval of the governing authority of the  
 356 county for which such person is appointed, and shall be paid from the county funds of such  
 357 county. All fees collected for the services of such appointed person shall be paid into the  
 358 general funds of the county served.

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

361 **SECTION 1-8.**

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

364 "30-5-7.

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

374 **SECTION 1-9.**

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

377 "30-5-8.

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

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

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

387 ~~(A) A resident of a long-term care facility, as defined in Article 4 of Chapter 8 of Title~~  
388 ~~31, and~~

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

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

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

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

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

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

404 **SECTION 1-10.**

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

408 "30-5-10.

409 The ~~Department of Human Services~~ department, the Georgia Peace Officer Standards and  
410 Training Council, the Prosecuting Attorneys' Council of the State of Georgia, and the

411 Institute of Continuing Judicial Education shall develop programs for the education and  
 412 training of social services, criminal justice, and judicial professionals concerning the abuse,  
 413 neglect, and exploitation of persons who are 65 years of age or older disabled adults, elder  
 414 persons, and residents of long-term care facilities, as defined in Code Section 16-5-100.  
 415 Said agencies, together with any other agency of this state which is involved in the  
 416 investigation of the abuse, neglect, or exploitation of persons who are 65 years of age or  
 417 older disabled adults, elder persons, and residents of long-term care facilities, as defined  
 418 in Code Section 16-5-100, are directed to cooperate in the development of such training  
 419 programs to the extent allowable under Article I, Section II, Paragraph III of the  
 420 Constitution of this state."

#### 421 SECTION 1-11.

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

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

#### 430 SECTION 1-12.

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

433 "31-8-82.

434 (a) Any:

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

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

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

442 who has knowledge of the following people who have reasonable cause to believe that any  
 443 resident or former resident has been abused or exploited while residing in a long-term care  
 444 facility shall immediately make a report as described in subsection ~~(c)~~ (d) of this Code  
 445 section by telephone or in person to the department. ~~In the event that an immediate report~~

446 ~~to the department is not possible, the person and~~ shall make the report to the appropriate  
 447 law enforcement agency or prosecuting attorney:

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

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

452 (3) Physical therapists;

453 (4) Occupational therapists;

454 (5) Day-care personnel;

455 (6) Coroners;

456 (7) Medical examiners;

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

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

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

462 (11) Clergy members.

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

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

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

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

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

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

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

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

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

480 ~~(d) Upon receipt of a report of abuse or exploitation, the department may notify the~~  
 481 ~~appropriate law enforcement agency. In the event a report is made directly to a law~~

482 ~~enforcement agency, under subsection (a) or (b) of this Code section, that agency shall~~  
 483 ~~immediately notify the department.~~

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

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

498 **SECTION 1-13.**

499 Said article is further amended by revising Code Section 31-8-86 relating to confidentiality,  
 500 as follows:

501 "31-8-86.

502 The identities of the resident, the alleged perpetrator, and persons making a report or  
 503 providing information or evidence shall not be disclosed to the public unless required to  
 504 be revealed in court proceedings or upon the written consent of the person whose identity  
 505 is to be revealed or as otherwise required by law. Upon the resident's or his or her  
 506 representative's request, the department shall make information obtained in an abuse report  
 507 or complaint and an investigation available to an allegedly abused or exploited resident or  
 508 his or her representative for inspection or duplication, except that such disclosure shall be  
 509 made without revealing the identity of any other resident, the person making the report, or  
 510 persons providing information by name or inference. For the purpose of this Code section,  
 511 the term 'representative' shall include any person authorized in writing by the resident or  
 512 appointed by an appropriate court to act upon the resident's behalf. The term  
 513 'representative' also shall include a family member of a deceased or physically or mentally  
 514 impaired resident unable to grant authorization; provided, however, that such family  
 515 members who do not have written or court authorization shall not be authorized by this  
 516 Code section to receive the resident's health records as defined in Code Section 31-33-1.  
 517 Nothing in this Code section shall be construed to deny agencies participating in joint

518 investigations at the request of and with the department, or conducting separate  
 519 investigations of abuse or exploitation within an agency's scope of authority, or law  
 520 enforcement personnel who are conducting an investigation into any criminal offense in  
 521 which a resident is a victim from having access to such records."

522 PART II

523 MANDATORY REPORTERS

524 SECTION 2-1.

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

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

529 PART III

530 CROSS-REFERENCES

531 SECTION 3-1.

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

534 "(4) 'Crime' means an act committed in this state which constitutes any violation of  
 535 Chapter 5 of Title 16; Chapter 6 of Title 16; Article 1, 3, or 4 of Chapter 7 of Title 16;  
 536 Article 1 or 2 of Chapter 8 of Title 16; Chapter 9 of Title 16; Part 3 of Article 3 of  
 537 Chapter 12 of Title 16; ~~Code Section 30-5-8~~; Code Section 40-6-393; Code Section  
 538 40-6-393.1; or Code Section 40-6-394."

539 SECTION 3-2.

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

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

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

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



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

552 **SECTION 3-3.**

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

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

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

560 **SECTION 3-4.**

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

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

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

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

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

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

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

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

571 (G) A violation of Code Section 16-5-1, ~~relating to murder and felony murder;~~

572 (H) A violation of Code Section 16-4-1, ~~relating to criminal attempt as it concerns~~  
 573 ~~attempted murder;~~

574 (I) A violation of Code Section 16-8-40, ~~relating to robbery;~~

575 (J) A violation of Code Section 16-8-41, ~~relating to armed robbery;~~

576 (K) A felony violation of Code Section 16-9-1;

577 (L) A violation of Article 8 of Chapter 5 of Title 16;

578 ~~(L)~~(M) A violation of Chapter 13 of Title 16, ~~relating to controlled substances; or~~

579 ~~(M)~~(N) Any other offense committed in another jurisdiction which, if committed in  
 580 this state, would be deemed to be such a crime without regard to its designation  
 581 elsewhere."

582 **SECTION 3-5.**

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

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

589 **SECTION 3-6.**

590 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section  
 591 35-3-34.1, relating to circumstances when exonerated first offender's criminal record may  
 592 be disclosed, as follows:

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

599 **SECTION 3-7.**

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

603 "(3) The employment is with a ~~nursing home, assisted living community, personal care~~  
 604 ~~home,~~ long-term care facility as defined in Code Section 31-8-51 or a person or entity  
 605 that offers day care for elderly persons and the defendant was discharged under this  
 606 article after prosecution for the offense of sexual battery, incest, pimping, pandering, or  
 607 a violation of ~~Code Section 30-5-8~~ Article 8 of Chapter 5 of Title 16; or"

608 **SECTION 3-8.**

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

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

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

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

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

620

## PART IV

621

## REPEALER

622

**SECTION 4-1.**

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