

The Senate Committee on Special Judiciary offered the following substitute to HB 247:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to crimes
2 against the person, so as to repeal an enhanced penalty relating to battery against a person
3 65 years of age or older; to revise a definition relative to the protection of disabled adults and
4 elder persons; to amend Code Section 31-7-12.1 of the Official Code of Georgia Annotated,
5 relating to unlicensed personal care homes, so as to authorize inspections of unlicensed
6 personal care homes by a local or state law enforcement agency under certain circumstances;
7 to amend Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
8 relating to dangerous instrumentalities and practices, so as to provide for the misdemeanor
9 crime of domestic violence; to provide for definitions; to provide enhanced penalties; to
10 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
11 for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

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

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

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

23 ~~(k)~~(j) A person who is an employee, agent, or volunteer at any facility licensed or required
24 to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code
25 Section 31-7-12.2, relating to assisted living communities, or Code Section 31-7-12,
26 relating to personal care homes, or who is required to be licensed pursuant to Code Section

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

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

38

SECTION 2.

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

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

47

SECTION 3.

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

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

60 (h) Any person who owns or operates a personal care home in violation of subsection (b)
 61 of Code Section 31-7-12 shall be guilty of a misdemeanor for a first violation, unless such

62 violation is in conjunction with ~~abuse, neglect, or exploitation as defined in Code Section~~
 63 ~~30-5-3~~ a violation of Article 8 of Chapter 5 of Title 16, in which case such person shall be
 64 guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than
 65 one nor more than five years. Upon conviction for a second or subsequent such violation,
 66 such person shall be guilty of a felony and, upon conviction, shall be punished by
 67 imprisonment for not less than one nor more than ten years."

68 **SECTION 4.**

69 Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
 70 dangerous instrumentalities and practices, is amended by adding a new Code section to read
 71 as follows:

72 "16-11-131.1.

73 (a) For purposes of this Code section, the term:

74 (1) 'Antique firearm' means:

75 (A) Any firearm, including any firearm with a matchlock, flintlock, percussion cap, or
 76 similar type of ignition system, manufactured in or before 1898;

77 (B) Any replica of any firearm described in subparagraph (A) of this paragraph if such
 78 replica:

79 (i) Is not designed or redesigned for using rimfire or conventional centerfire fixed
 80 ammunition; or

81 (ii) Uses rimfire or conventional centerfire fixed ammunition which is no longer
 82 manufactured in the United States and which is not readily available in the ordinary
 83 channels of commercial trade; or

84 (C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which
 85 is designed to use black powder, or a black powder substitute, and which cannot use
 86 fixed ammunition. For purposes of this subparagraph, the term 'antique firearm' shall
 87 not include any weapon which incorporates a firearm frame or receiver, any firearm
 88 which is converted into a muzzle loading weapon, or any muzzle loading weapon which
 89 can be readily converted to fire fixed ammunition by replacing the barrel, bolt,
 90 breechblock, or any combination thereof.

91 (2) 'Firearm' includes any handgun, rifle, shotgun, or other weapon which will or can be
 92 converted to expel a projectile by the action of an explosive or electrical charge. Such
 93 term shall not include an antique firearm.

94 (3) 'Intimate partner' means, with respect to a person, the spouse of the person, a former
 95 spouse of the person, an individual who is a parent of a child of the person, and an
 96 individual who cohabitates or has cohabitated with the person.

97 (4) 'Misdemeanor crime of domestic violence' means an offense that:
98 (A) Is a misdemeanor under state law; and
99 (B) Has, as an element, the use or attempted use of physical force, or the threatened use
100 of a deadly weapon, committed by a current or former spouse, parent, or guardian of
101 the victim, by a person with whom the victim shares a child in common, by a person
102 who is cohabitating with or has cohabitated with the victim as a spouse, parent, or
103 guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
104 (b) It shall be unlawful for any person:
105 (1) Who is subject to a court order that:
106 (A) Was issued after a hearing of which such person received actual notice, and at
107 which such person had an opportunity to participate;
108 (B) Restrains such person from harassing, stalking, or threatening an intimate partner
109 of such person or child of such intimate partner or person, or engaging in other conduct
110 that would place an intimate partner in reasonable fear of bodily injury to the partner
111 or child; and
112 (C)(i) Includes a finding that such person represents a credible threat to the physical
113 safety of such intimate partner or child; or
114 (ii) By its terms explicitly prohibits the use, attempted use, or threatened use of
115 physical force against such intimate partner or child that would reasonably be
116 expected to cause bodily injury; or
117 (2) Who has been convicted in any court of a misdemeanor crime of domestic violence
118 to ship or transport, or possess, any firearm or ammunition or to receive any firearm or
119 ammunition.
120 (c) Any person who violates this Code section shall be imprisoned for not less than one
121 year nor more than ten years; provided, however, that upon a second or subsequent
122 conviction, such person shall be imprisoned for not less than five nor more than ten years.
123 (d) Any person who is prohibited by this Code section from possessing a firearm and who
124 attempts to purchase or obtain transfer of a firearm shall be guilty of a felony and upon
125 conviction shall be punished by imprisonment for not less than one year nor more than five
126 years; provided, however, that upon a second or subsequent conviction, such person shall
127 be punished by imprisonment for not less than five nor more than ten years.
128 (e) This Code section shall not apply to any person who has been pardoned for the felony
129 by the President of the United States, the State Board of Pardons and Paroles, or the person
130 or agency empowered to grant pardons under the constitutions or laws of the several states
131 or of a foreign nation and, by the terms of the pardon, has expressly been authorized to
132 receive, possess, or transport a firearm."

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SECTION 5.

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

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SECTION 6.

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