

The Senate Committee on Judiciary offered the following substitute to HB 424:

A BILL TO BE ENTITLED  
AN ACT

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

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

14 **SECTION 1.**

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

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

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

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

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

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

39

### SECTION 2.

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

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

48

### SECTION 3.

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

51 "16-15-3.

52 As used in this chapter, the term:

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

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

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

58 (C) Any offense defined in Code Section 16-6-1 as rape, 16-6-2 as aggravated sodomy,  
 59 16-6-3 as statutory rape, or 16-6-22.2 as aggravated sexual battery;

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

- 62 (E) Any offense defined in Article 4 of Chapter 11 of this title, relating to dangerous  
 63 instrumentalities and practices;
- 64 (F) Any offense defined in Code Section 42-5-15, 42-5-16, 42-5-17, 42-5-18, or  
 65 42-5-19, relating to the security of state or county correctional facilities;
- 66 (G) Any offense defined in Code Section 49-4A-11, relating to aiding or encouraging  
 67 a child to escape from custody;
- 68 (H) Any offense of criminal trespass or criminal damage to property resulting from any  
 69 act of gang related painting on, tagging, marking on, writing on, or creating any form  
 70 of graffiti on the property of another;
- 71 (I) Any criminal offense committed in violation of the laws of the United States or its  
 72 territories, dominions, or possessions, any of the several states, or any foreign nation  
 73 which, if committed in this state, would be considered criminal gang activity under this  
 74 Code section; and
- 75 (J) Any criminal offense in the State of Georgia, any other state, or the United States  
 76 that involves violence, possession of a weapon, or use of a weapon, whether designated  
 77 as a felony or not, and regardless of the maximum sentence that could be imposed or  
 78 actually was imposed.
- 79 (2) 'Criminal gang activity' on and after the effective date of this paragraph shall also  
 80 mean the commission, attempted commission, conspiracy to commit, or the solicitation,  
 81 coercion, or intimidation of another person to commit on and after the effective date of  
 82 this paragraph any offense defined in Code Section 16-5-46 as trafficking persons for  
 83 labor servitude or sexual servitude, 16-6-10 as keeping a place of prostitution, 16-6-11  
 84 as pimping, or 16-6-12 as pandering.
- 85 (3) 'Criminal street gang' means any organization, association, or group of three or more  
 86 persons associated in fact, whether formal or informal, which engages in criminal gang  
 87 activity as defined in paragraph (1) of this Code section. The existence of such  
 88 organization, association, or group of individuals associated in fact may be established  
 89 by evidence of a common name or common identifying signs, symbols, tattoos, graffiti,  
 90 or attire or other distinguishing characteristics, including, but not limited to, common  
 91 activities, customs, or behaviors. Such term shall not include three or more persons,  
 92 associated in fact, whether formal or informal, who are not engaged in criminal gang  
 93 activity."

94

#### SECTION 4.

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

98 "24-4-412.

99 (a) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault  
 100 with the intent to rape in violation of Code Section 16-5-21; trafficking persons for labor  
 101 servitude or sexual servitude in violation of Code Section 16-5-46; aggravated sodomy or  
 102 sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code  
 103 Section 16-6-3; aggravated child molestation or child molestation in violation of Code  
 104 Section 16-6-4; keeping a place of prostitution in violation of Code Section 16-6-10;  
 105 pimping in violation of Code Section 16-6-11; pandering in violation of Code  
 106 Section 16-6-12; incest in violation of Code Section 16-6-22; sexual battery in violation  
 107 of Code Section 16-6-22.1; or aggravated sexual battery in violation of Code  
 108 Section 16-6-22.2, evidence relating to the past sexual behavior of the complaining witness  
 109 shall not be admissible, either as direct evidence or on cross-examination of the  
 110 complaining witness or other witnesses, except as provided in this Code section. For the  
 111 purposes of this Code section, evidence of past sexual behavior includes, but is not limited  
 112 to, evidence of the complaining witness's marital history, mode of dress, general reputation  
 113 for promiscuity, nonchastity, or sexual mores contrary to the community standards.

114 (b) In any prosecution for rape in violation of Code Section 16-6-1; aggravated assault  
 115 with the intent to rape in violation of Code Section 16-5-21; trafficking persons for labor  
 116 servitude or sexual servitude in violation of Code Section 16-5-46; aggravated sodomy or  
 117 sodomy in violation of Code Section 16-6-2; statutory rape in violation of Code  
 118 Section 16-6-3; aggravated child molestation or child molestation in violation of Code  
 119 Section 16-6-4; keeping a place of prostitution in violation of Code Section 16-6-10;  
 120 pimping in violation of Code Section 16-6-11; pandering in violation of Code  
 121 Section 16-6-12; incest in violation of Code Section 16-6-22; sexual battery in violation  
 122 of Code Section 16-6-22.1; or aggravated sexual battery in violation of Code Section  
 123 16-6-22.2, ~~evidence relating to the past sexual behavior of the complaining witness may~~  
 124 ~~be introduced if the court may admit the following evidence relating to the past sexual~~  
 125 ~~behavior of the complaining witness, following the procedure described in subsection (c)~~  
 126 ~~of this Code section, finds that the past sexual behavior directly involved the participation~~  
 127 ~~of the accused and finds that the evidence expected to be introduced supports an inference~~  
 128 ~~that the accused could have reasonably believed that the complaining witness consented~~  
 129 ~~to the conduct complained of in the prosecution;~~

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

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

135 reasonably believed that the complaining witness consented to the conduct complained  
 136 of in the prosecution;

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

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

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

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

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

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

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

157 ~~(3)~~(2) Before admitting the evidence under this Code section, the court shall conduct an  
 158 in camera hearing to examine the merits of the motion ~~The defense may then introduce~~  
 159 ~~evidence pursuant to the order of the court."~~

160

## SECTION 5.

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

163 "24-8-820.

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

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

175 **SECTION 6.**

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

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

188 (h) Any person who owns or operates a personal care home in violation of subsection (b)  
 189 of Code Section 31-7-12 shall be guilty of a misdemeanor for a first violation, unless such  
 190 violation is in conjunction with ~~abuse, neglect, or exploitation as defined in Code Section~~  
 191 ~~30-5-3~~ a violation of Article 8 of Chapter 5 of Title 16, in which case such person shall be  
 192 guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than  
 193 one nor more than five years. Upon conviction for a second or subsequent such violation,  
 194 such person shall be guilty of a felony and, upon conviction, shall be punished by  
 195 imprisonment for not less than one nor more than ten years."

196 **SECTION 7.**

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

200 **SECTION 8.**

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

203

**SECTION 9.**

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