

House Bill 635

By: Representatives Cooper of the 43rd, Benton of the 31st, Jones of the 53rd, Broadrick of the 4th, and Reeves of the 34th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 30 of the Official Code of Georgia Annotated, relating to the
2 "Disabled Adults and Elder Persons Protection Act," so as to provide for the establishment
3 of at-risk adult protective investigative/coordinating teams to coordinate the investigation of
4 and responses to suspected instances of abuse, neglect, or exploitation of disabled adults or
5 elder persons; to provide for a definition; to provide for immunity; to provide for
6 coordination with the director of the Division of Aging Services; to provide for the
7 composition, duties, and responsibilities of the at-risk adult protective
8 investigative/coordinating teams; to provide for memoranda of understanding; to provide for
9 confidentiality of records; to provide for related matters; to repeal conflicting laws; and for
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Chapter 5 of Title 30 of the Official Code of Georgia Annotated, relating to the "Disabled
14 Adults and Elder Persons Protection Act," is amended in Code Section 30-5-3, relating to
15 definitions, by adding a new paragraph to read as follows:

16 "(1.5) 'At-risk adult protective investigative/coordinating team' means the multiagency
17 team established in each judicial circuit in this state pursuant to Code Section 30-5-11."

18 style="text-align:center">**SECTION 2.**

19 Said chapter is further amended by revising subsections (b) and (c) of Code Section 30-5-4,
20 relating to reporting of need for protective services, manner and contents of report, immunity
21 from civil or criminal liability, and privileged communications, as follows:

22 "(b)(1)(A) A report that a disabled adult or elder person is in need of protective services
23 or has been the victim of abuse, neglect, or exploitation shall be made to an adult
24 protection agency providing protective services as designated by the department and
25 to an appropriate law enforcement agency or prosecuting attorney. If a report of a

26 disabled adult or elder person abuse, neglect, or exploitation is made to an adult
27 protection agency or independently discovered by the agency, then the agency shall
28 immediately make a reasonable determination based on available information as to
29 whether the incident alleges actions by an individual, other than the disabled adult or
30 elder person, that constitute a crime and include such information in their report. If a
31 crime is suspected, the report shall immediately be forwarded to the appropriate law
32 enforcement agency or prosecuting attorney. During an adult ~~protective~~ protection
33 agency's investigation, it shall be under a continuing obligation to immediately report
34 the discovery of any evidence that may constitute a crime.

35 (B) If the disabled adult or person is 65 years of age or older and is a resident, a report
36 shall be made in accordance with Article 4 of Chapter 8 of Title 31. If a report made
37 in accordance with the provisions of this Code section alleges that the abuse or
38 exploitation occurred within a long-term care facility, such report shall be investigated
39 in accordance with Articles 3 and 4 of Chapter 8 of Title 31.

40 (2) Reporting required by subparagraph (A) of paragraph (1) of this subsection may be
41 made by oral or written communication. Such report shall include the name and address
42 of the disabled adult or elder person and should include the name and address of the
43 disabled adult's or elder person's caretaker, the age of the disabled adult or elder person,
44 the nature and extent of the disabled adult's or elder person's injury or condition resulting
45 from abuse, exploitation, or neglect, and other pertinent information.

46 (3) When a report of a disabled adult's or elder person's abuse, neglect, or exploitation
47 is originally reported to a law enforcement agency, it shall be forwarded by such agency
48 to the director or his or her designee within 24 hours of receipt.

49 (c) Anyone who makes a report pursuant to this chapter, who testifies in any judicial
50 proceeding arising from the report, who provides protective services, ~~or~~ who participates
51 in a required investigation, or who participates on an at-risk adult protective
52 investigative/coordinating team under the provisions of this chapter shall be immune from
53 any civil liability or criminal prosecution on account of such report or testimony or
54 participation, unless such person acted in bad faith, with a malicious purpose, or was a
55 party to such crime or fraud. Any financial institution or investment company, including
56 without limitation officers and directors thereof, that is an employer of anyone who makes
57 a report pursuant to this chapter in his or her capacity as an employee, or who testifies in
58 any judicial proceeding arising from a report made in his or her capacity as an employee,
59 or who participates in a required investigation under the provisions of this chapter in his
60 or her capacity as an employee, shall be immune from any civil liability or criminal
61 prosecution on account of such report or testimony or participation of its employee, unless
62 such financial institution or investment company knew or should have known that the

63 employee acted in bad faith or with a malicious purpose and failed to take reasonable and
 64 available measures to prevent such employee from acting in bad faith or with a malicious
 65 purpose. The immunity described in this subsection shall apply not only with respect to
 66 the acts of making a report, testifying in a judicial proceeding arising from a report,
 67 providing protective services, or participating in a required investigation but also shall
 68 apply with respect to the content of the information communicated in such acts."

69 **SECTION 3.**

70 Said chapter is further amended by revising Code Section 30-5-5, relating to investigation
 71 of reports of need for protective services, interference with investigation, and provision of
 72 protective services, as follows:

73 "30-5-5.

74 (a) When the director receives a report that a disabled adult or elder person is in need of
 75 protective services, he or she shall, in coordination with the at-risk adult protective
 76 investigative/coordinating team in the judicial circuit where such disabled adult or elder
 77 person resides, conduct or have conducted a prompt and thorough investigation to
 78 determine whether the disabled adult or elder person is in need of protective services and
 79 what services are needed. The investigation shall include a visit to the person and
 80 consultation with others having knowledge of the facts of the particular case. Within ten
 81 days after receipt of the report, the director shall acknowledge receipt of the report, in
 82 writing, to the person making the report.

83 (b) Any person conducting an investigation required by this Code section who is unable
 84 to gain access to the disabled adult or elder person as a result of interference by another
 85 person may petition the court for an order authorizing the investigation and prohibiting
 86 interference therewith, which petition shall allege specific facts in support thereof. A
 87 hearing upon such petition and notice thereof shall be carried out pursuant to subsection (f)
 88 of this Code section. If as a result of the hearing the court finds probable cause to believe
 89 that the person named in the petition is a disabled adult in need of protective services or an
 90 elder person needing protective services and that any other person is interfering with the
 91 conduct of an investigation required under this Code section, the court may issue an order
 92 authorizing that investigation and prohibiting interference therewith by any person.

93 (c) If as a result of an investigation conducted under this chapter the director, in
 94 coordination with the at-risk adult protective investigative/coordinating team, determines
 95 that a disabled adult or elder person is in need of protective services, the director, in
 96 coordination with the at-risk adult protective investigative/coordinating team, shall
 97 immediately provide or arrange for protective services for any disabled adult or elder
 98 person who consents thereto.

99 (d) Any person providing protective services as authorized by subsection (c) of this Code
100 section who determines that another person is interfering with the provision of such
101 services may petition the court for an order authorizing such services and prohibiting
102 interference therewith. Such petition shall allege specific facts in support thereof,
103 including, but not limited to, the results of any investigation required to be made under this
104 chapter. A hearing upon such petition and notice thereof shall be carried out pursuant to
105 subsection (f) of this Code section. If as a result of the hearing the court finds by clear and
106 convincing evidence that the person named in the petition is a disabled adult in need of
107 protective services or an elder person needing protective services and that any other person
108 is interfering with the provision of such services, the court may issue an order authorizing
109 the provision of such services and prohibiting the interference therewith by any person.

110 (e) Protective services may not be provided under this chapter to any person who does not
111 consent to such services or who, having consented, withdraws such consent. Nothing in
112 this chapter shall prohibit the department from petitioning for the appointment of a
113 guardian for a disabled adult or elder person pursuant to Chapters 4 and 5 of Title 29.

114 (f) A hearing on any petition filed under this Code section shall be held no sooner than five
115 and no later than ten days after such petition is filed, unless a continuance is granted. At
116 least three days prior to such hearing, notice thereof shall be served on the petitioner and
117 notice and copy of the petition shall be served on the person alleged to be a disabled adult
118 in need of protective services or an elder person needing protective services and on such
119 person or persons named in the petition as interfering with the investigation or with the
120 provision of protective services, as applicable. Notice shall be served either in person or
121 by first-class mail. Any person willfully violating any order issued pursuant to this Code
122 section shall be in contempt of the court issuing such order and may be punished
123 accordingly by the judge of that court.

124 (g) The expenses of the court and the hearing officer for any hearing conducted under this
125 Code section shall be the same as those provided in Code Section 37-3-122 and shall be
126 paid as provided therein. A disabled adult or elder person shall be deemed to be a patient
127 under Code Section 37-3-122 only for purposes of determining hearing expenses
128 thereunder. Nothing in this Code section shall authorize the payment of attorney's fees for
129 any hearing conducted under this Code section.

130 (h) Notwithstanding any other provisions of this Code section, if the director, ~~or~~ adult
131 protection agency employee, or at-risk adult protective investigative/coordinating team
132 member receives a report or gains knowledge that a disabled adult or elder person is in
133 need of protective services and such disabled adult or elder person may be in imminent
134 danger resulting from abuse, exploitation, or neglect, the director or designee of the
135 director may file a petition with the probate or superior court stating the grounds on which

136 the director or designee of the director believes that the disabled adult or elder person may
 137 be in imminent danger and seeking immediate access to such person. The judge, in his or
 138 her discretion, may issue an ex parte order requiring the caretaker or any other person at
 139 the place where the disabled adult or elder person resides to afford an adult protection
 140 agency employee immediate access to such person to determine the person's well-being.
 141 If the adult protection agency employee is denied access to the disabled adult or elder
 142 person, the employee shall contact immediately a law enforcement officer to assist the
 143 employee in enforcing such order. Any person willfully violating any order issued
 144 pursuant to this subsection shall be in contempt of the court issuing such order and may be
 145 punished accordingly by the judge of the court. The adult protection agency employee
 146 shall conduct a brief investigation to determine the condition of the disabled adult or elder
 147 person.

148 (i) In any case in which the judge of the court is unable to hear a case brought under this
 149 chapter within the time required for such hearing, such judge shall appoint a person to
 150 serve and exercise all the jurisdiction of the court in such case. Any person so appointed
 151 shall be a member of the State Bar of Georgia and be otherwise qualified for his or her
 152 duties by training and experience. Such appointment may be made on a case-by-case basis
 153 or by making a standing appointment of one or more persons. Any person receiving such
 154 standing appointment shall serve at the pleasure of the judge making the appointment or
 155 said judge's successor in office to hear such cases if and when necessary. The
 156 compensation of a person so appointed shall be as agreed upon by the judge who makes the
 157 appointment and the person appointed, with the approval of the governing authority of the
 158 county for which such person is appointed, and shall be paid from the county funds of such
 159 county. All fees collected for the services of such appointed person shall be paid into the
 160 general funds of the county served.

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

163 **SECTION 4.**

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

166 "30-5-7.

167 All records pertaining to the abuse, neglect, or exploitation of disabled adults or elder
 168 persons in the custody of the department or an at-risk adult protective
 169 investigative/coordinating team shall be confidential; and access thereto by persons other
 170 than the department, the director, ~~or~~ the district attorney, or members of an at-risk adult
 171 protective investigative/coordinating team shall only be by valid subpoena or order of any

172 court of competent jurisdiction. Nothing in this Code section shall be construed to deny
 173 agencies participating in joint investigations at the request of and with the department, or
 174 conducting separate investigations of abuse, neglect, or exploitation within an agency's
 175 scope of authority, or law enforcement personnel who are conducting an investigation into
 176 any criminal offense in which a disabled adult or elder person is a victim from having
 177 access to such records."

178 SECTION 5.

179 Said chapter is further amended by adding a new Code section to read as follows:

180 "30-5-11.

181 (a) The district attorney of each judicial circuit shall establish, or cause to be established,
 182 an at-risk adult protective investigative/coordinating team for the purposes of:

183 (1) Coordinating the investigation of suspected instances of abuse, neglect, or
 184 exploitation of a disabled adult or elder person pursuant to Code Section 30-5-5;

185 (2) Coordinating responses to suspected instances of abuse, neglect, or exploitation of
 186 a disabled adult or elder person, including protective services; and

187 (3) Immediately reporting the discovery of any evidence that may constitute a crime to
 188 the appropriate law enforcement agency or prosecuting attorney.

189 (b)(1) As determined by the district attorney or his or her designee, the at-risk adult
 190 protective investigative/coordinating team shall consist of representatives, from within
 191 the appropriate judicial circuit, of:

192 (A) The district attorney or his or her designee;

193 (B) Local law enforcement agencies;

194 (C) The Georgia Bureau of Investigation;

195 (D) Adult Protective Services of the department's Division of Aging Services;

196 (E) The Healthcare Facility Regulation Division of the Department of Community
 197 Health;

198 (F) Nonprofit organizations that provide victim services or adult care services;

199 (G) Local, regional, and state task forces or coordinating entities regarding at-risk
 200 adults;

201 (H) Providers of medical, legal, or housing services or housing facilities to disabled
 202 adults or elder persons who are victims of abuse, neglect, or exploitation; and

203 (I) Any other entity which the district attorney or his or her designee determines is
 204 necessary for the successful operation of the at-risk adult protective
 205 investigative/coordinating team.

206 (2) Upon establishment of the at-risk adult protective investigative/coordinating team,
 207 the district attorney or his or her designee shall inform the director of the membership of

208 such investigative/coordinating team, including the agencies, organizations, or entities
209 represented. The district attorney or his or her designee shall also promptly inform the
210 director of any changes to the membership, including any changes to agencies,
211 organizations, or entities represented.

212 (c) Each at-risk adult protective investigative/coordinating team shall:

213 (1) Meet regularly, as determined by the district attorney or his or her designee;
214 provided, however, that meetings shall be held at least semiannually;

215 (2) Coordinate with the director on investigations of instances of suspected abuse,
216 neglect, or exploitation of disabled adults or elder persons that are based on reports made
217 pursuant to Code Section 30-5-4 or reports made or concerns raised by members of the
218 agencies, organizations, or entities represented on the at-risk adult protective
219 investigative/coordinating team; and

220 (3) Adhere to the standards, definitions, investigative methods, procedures, and remedial
221 courses of action established by or pursuant to this chapter.

222 (d) The district attorney or his or her designee shall coordinate the creation of a
223 memorandum of understanding that describes the at-risk adult protective
224 investigative/coordinating team's procedures and methods of operation in detail, including
225 confidentiality requirements and the sharing of information among such
226 investigative/coordinating team's members in accordance with subsection (f) of this Code
227 section. The memorandum shall be signed by a representative of each agency,
228 organization, or entity participating in the at-risk adult protective investigative/coordinating
229 team.

230 (e) By March 15 of each year, each district attorney shall cause to be filed with the director
231 an annual report summarizing the work of the at-risk adult protective
232 investigative/coordinating team conducted in the previous calendar year.

233 (f)(1) All records of an at-risk adult protective investigative/coordinating team pertaining
234 to the abuse, neglect, or exploitation of disabled adults or elder persons shall be
235 confidential pursuant to Code Section 30-5-7.

236 (2) It shall be unlawful for any member of an at-risk adult protective
237 investigative/coordinating team to knowingly disclose, receive, make use of, or authorize,
238 or knowingly permit, participate in, or acquiesce to the use of, any information received
239 or generated in the course of such investigative/coordinating team's investigations,
240 responses, or activities to any third party; provided, however, that disclosure may be
241 made to persons and entities directly involved in the administration of this Code section,
242 including:

243 (A) Persons providing protective services necessary for the disabled adult or elder
244 person;

- 245 (B) Attorneys, next friends, or other representatives of the disabled adult or elder
246 person who are legally empowered to act in such person's interest;
247 (C) Representatives of law enforcement;
248 (D) Grand juries or courts in the exercise of official business;
249 (E) Members of such at-risk adult protective investigative/coordinating team; and
250 (F) Persons engaged in bona fide research or audit purposes; provided, however, that
251 only information in the aggregate without identifying information shall be provided for
252 research or audit purposes and confidentiality of the data shall be maintained.
- 253 (3) Unless expressly provided otherwise in the memorandum of understanding, members
254 of an at-risk adult protective investigative/coordinating team may share information
255 received or generated in the course of such team's investigations, responses, or activities
256 only among members of such team.
- 257 (4) To promote efficiency and effectiveness in its mission, an at-risk adult protective
258 investigative/coordinating team may maintain a data base of information about such
259 team's past and ongoing cases; provided that identifying information about individual
260 victims and clients shall not be accessed by any person outside of such at-risk adult
261 protective investigative/coordinating team other than those persons serving as care
262 coordinators or victim advocates or who represent organizations providing such services."

263

SECTION 6.

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