



At Risk Adult Abuse, Neglect and Exploitation in Georgia: Review and Recommendations

Submitted by the Ad Hoc Committee
on At Risk Adult Abuse, Neglect and Exploitation

Adopted by the Georgia Association of Chiefs of Police
Executive Board

May 15, 2013



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Chief Frank Waits
President
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Dear President Waits:

In December 2012, you, as president of the Georgia Association of Chiefs of Police (GACP) Executive Board, appointed an Ad Hoc Committee (Committee) for the purpose of gathering facts and providing recommendations regarding the abuse, neglect, and exploitation of At Risk Adults.

On behalf of the Committee, I present the attached "White Paper" and various appendixes. The Ad Hoc Committee or the subgroups of the Committee met several times to discuss current law, policy issues and investigative protocols. I believe the attached work fulfills your charge to the Committee.

The Committee appreciates the opportunity to address the serious and timely issue of "At Risk Adults" in a manner that will provide policymakers with a framework to develop appropriate procedures, policy and training in managing the challenges of this difficult issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis M. Dekmar".

Louis M. Dekmar
Chief of Police



Ad Hoc Committee on At Risk Adult Abuse,
Neglect and Exploitation

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I. Introduction, Formation and Purpose of Ad Hoc Committee

In December 2012, J. Frank Waits, President of the Georgia Association of Chiefs of Police (GACP) Executive Board appointed an Ad Hoc Committee (Committee) for the purpose of gathering facts and providing recommendations regarding the abuse, neglect and exploitation of At Risk Adults. Crimes against At Risk Adults are unlike other types of crimes encountered and investigated by primary and secondary responders. At Risk Adults deserve the same protection under the law as any other citizen. Criminal investigations regarding At Risk Adults are hampered by several factors. The most significant challenge faced by law enforcement is the fact that the location where the abuse occurs is either in the family setting, or in an unlicensed group home setting and the residents can be moved from home to home, and county to county, at a moment's notice to avoid detection or a criminal investigation.

There are significant sums of private and public funds that are at risk. In 2011, almost \$2.4 billion dollars were issued to Georgia At Risk Adults through state government agencies. This does not include the personal loss of life savings, homes, vehicles, and other property that belong to the victims of these crimes. In Georgia, the number of cases reported has increased 65% from 2008 to 2012. There were 15,108 cases accepted by Adult Protective Services for investigation in 2012 alone.

This paper will address the following topics:

- Scope of the Problem;
- Agencies Involved in Protecting At Risk Adults and Conducting Investigations;
- Applicable Laws;
- Best Practices/Policies for Criminal Investigations;
- Training;
- 2013 Legislative Session;
- HIPPA;
- Public Awareness; and
- Conclusion and Recommendations.

Finally, this Committee will make recommendations to the Georgia law enforcement profession to assist in the criminal investigation and successful prosecution of these cases.

II. Scope of the Problem

According to the U.S. Census Bureau there has been a 15.1% increase in the U.S. population of persons 65 years old and older since 1990.¹ The estimated 2012 population in Georgia is 9,919,945.² It is estimated that persons 65 years old and older make up just over 11% of the population (1,091,193).³ By 2011, the population of persons 65 years old and older was greater than ever in the history of the Census. Beginning in 2012, the Alliance for Aging estimates that approximately 10,000 baby boomers will turn 65 every

¹ U. S. Census, Georgia Quick Facts (2012) at <http://quickfacts.census.gov/qfd/states/13000.html>.

² U. S. Census, Georgia Quick Facts (2012) at <http://quickfacts.census.gov/qfd/states/13000.html>.

³ U. S. Census, Georgia Quick Facts (2012) at <http://quickfacts.census.gov/qfd/states/13000.html>.

day for the next twenty years.⁴ According to the U.S. Census American Community Survey, the total number of individuals who are over 18 years of age, live in Georgia, and have a disability is 1,063,316.⁵ Together, these two groups – over 65 or with a disability, comprise one out of every five Georgians.

Cases involving the abuse, neglect and exploitation of At Risk Adults occur on a daily basis in Georgia.⁶ While frequently, the cases involve criminal activity, in many other cases the conduct is not considered criminal in nature. Generally, At Risk Adult abuse or neglect involves one or more of the following:

- 1) An intentional act or attempt to inflict physical or psychological harm;
- 2) Non-consensual sexual contact;
- 3) Illegal or inappropriate use or taking of an individual's assets or properties; or
- 4) Failure to provide for satisfying a person's basic life needs, i.e., food, care, housing, medical attention, or other necessities.⁷

Specific examples of the various types of abuse and neglect are reviewed in this section and detailed case studies of these incidents are included in an appendix to this document.

A. Physical Abuse

The most visible form of At Risk Adult abuse is physical abuse. Physical abuse is defined as the willful infliction of physical pain, injury, mental anguish, unreasonable confinement, or the willful deprivation of services that are essential to a disabled adult⁸ or elder person.⁹ In physical abuse cases, there will be visible signs such as multiple bruises, cuts, and possibly broken bones or burns. In one recently reported case, a caregiver battered a 24-year-old autistic woman, who has the intellectual capacity of a 10 year-old, by kicking her, whipping her with a belt, and dragging her by the hair across the floor. In this type of case, it is common for the victim to feel reluctant to disclose the physical abuse for fear of alienating, and/or loyalty to the family members or caregivers who are the authors of the abuse.

⁴ Alliance for Aging Research, Preparing for the Silver Tsunami (2006) at

<http://www.agingresearch.org/content/article/detail/826/>.

⁵ U.S. Census, American Community Survey (2011) at

http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S1810&prodType=table.

⁶ Unless stated in a specific reference source, the term “At Risk adult” for the purposes of this paper will include adults 65 and over as well as adults 18 years and over with any disabilities.

⁷ American Prosecutors Research Institute, Protecting America's Senior Citizens: What Local Prosecutors are doing to Fight Elder Abuse, Page 3. September 2003.

⁸ A person 18 years of age or older who is not a resident of a long-term care facility, but who is mentally or physically incapacitated or has Alzheimer's disease or dementia. O.C.G.A. § 30-5-3.

⁹ A person 65 years of age or older who is not a resident of a long-term care facility. O.C.G.A. § 30-5-3.

B. Withholding of Essential Services

Another recent case involving abuse was discovered when a disabled adult was arrested for burglary when he tried to forcibly enter a closed restaurant to get food. He begged not to be sent back to where he was living as he had been beaten and burned with a curling iron. He was found to have scars, burns and scabs on his body. When police went to the home where he was living, they found other disabled men living in squalid conditions. Their room smelled of urine, had no working lights, the roof was partially caved in, and there were roaches everywhere.

This incident involved the withholding of essential services. The law requires that certain essential services be provided to At Risk Adults, including social, medical, psychiatric or legal services necessary to safeguard the disabled adult's or elder person's rights and resources and to maintain the physical and mental well-being of such person. These essential services also include, but are not limited to, the provision of medical care for physical or mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection for health and safety hazards.

C. Financial Exploitation

Every year thousands of people lose all or part of their life savings to dishonest family members and caregivers. Although many of these incidents occur within a family setting, they are crimes that are frequently dismissed as "civil matters." At Risk Adults are often convinced or coerced into signing blank checks, transferring titles to their homes and vehicles, or surrendering ownership of other valuable property to others. This constitutes financial exploitation. Financial exploitation involves the illegal or improper use of a disabled adult's or elder person's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for another's profit or advantage. Victims of such financial exploitation crimes are reluctant to report them or even to cooperate in investigations of such crimes because they fear that a report would alert family members who might interfere even more with their independence. In other cases the At Risk Adult may be embarrassed at having been victimized. One such case involved an elderly victim with dementia who gave her daughter \$78,000.00 from her checking account for "safekeeping." Except for \$6,000.00, all of the funds were stolen by the daughter and son-in-law. The theft was discovered only after the mother asked the daughter to return the money. This was clearly a form of theft since the daughter was never authorized to expend any of these funds.

D. Neglect

Another form of At Risk Adult abuse is neglect. Neglect is defined as the absence or omission of essential services to the degree that it harms, or threatens with harm, the physical or emotional health of a disabled adult or elder person. There may be cases of self-neglect wherein the person does not have sufficient mental faculties or physical ability to provide for their own care. In many such instances, however, a family member or other caregiver purposefully neglects a person. The neglect may become obvious from soiled clothing and linens; bedsores; weight loss from poor nutrition or from no food at

all. It may result from the withholding of medications or from over-medicating the victim to make the person more controllable.

E. Sexual Abuse

A particularly egregious form of abuse is sexual abuse. These types of crimes are all too common. Many offenders consider group homes and other care facilities as target-rich environments. Frequently, in such cases there are no witnesses other than the victim, who is either unable to report the crime or assist in the investigation. In one case an employee at a group home allegedly admitted to police that he had sexually assaulted two severely disabled women in his care on a weekly basis for more than a decade before the abuse was discovered. In another incident an employee at a group home sexually assaulted a disabled man for more than a year without detection before the victim came forward.

III. Agencies Involved in Protecting At Risk Adults and Conducting Investigations

The abuse of At Risk Adults is recognized as a growing crime problem for Georgia as evidenced by the 65% increase in reported At Risk Adult abuse cases from 2008 to 2012. The victimization typically involves physical and financial abuse and also represents potentially millions of dollars in losses to the State of Georgia through fraudulent diversions of government funds, such as Medicaid fraud or food stamp program fraud.

In addition to the human costs in pain and suffering of At Risk Adults, there are potentially billions of state dollars and personal assets at-risk for fraud and theft. From January 1, 2011, through January 1, 2012, approximately \$2.4 billion in state and federal dollars were issued through the Department of Human Services, and the Department of Community Health, in food stamps and Medicaid waivers for adults over the age of 18 with any disability, and for the elderly over the age of 65. Increasingly, At Risk Adults are being targeted for their assets and/or monthly entitlement benefits which often require a coordinated response by federal, state and local agencies.

Several different agencies are responsible for investigating At Risk Adult abuse cases. There are two state agencies: the Department of Community Health/Healthcare Facility Regulation, and the Georgia Department of Human Services/Division of Aging Services. Law enforcement agencies should coordinate with these state agencies as they gather evidence to successfully prosecute these crimes.

The following is a list of some of the agencies that have joined together to investigate these criminal offenses:

Federal Agencies

Federal Bureau of Investigation
Office of Inspector General – Health and Human Services, Administration
for Community Living
Office of Inspector General – Social Security Administration
Office of Inspector General – United States Food and Drug Administration
Office of Inspector General – Veterans Administration

United States Attorney's Office

State Agencies

Georgia Administrative Office of the Courts
Georgia Advocacy Office
Georgia Association of Chiefs of Police
Georgia Bureau of Investigation
Georgia Commission on Family Violence
Georgia Criminal Justice Coordinating Council
Georgia Department of Behavior Health and Developmental Disabilities
Georgia Department of Community Affairs
Georgia Department of Community Health
Georgia Department of Human Services/Division of Aging Services
Georgia Department of Public Health
Georgia Institute for Continuing Judicial Education
Georgia Medicaid Fraud Control Unit
Georgia Network to End Sexual Assault - GNESEA
Georgia Peace Officer Standards and Training (POST) Council
Georgia Sheriff's Association
Governor's Office (Public Safety Advisor and General Counsel)
Governor's Office of Children and Families
Governor's Office of Consumer Affairs
Governor's Office of Disability Services Ombudsman
Inspector General - Georgia Department of Community Health
Inspector General - Georgia Department of Human Services
Prosecuting Attorneys Council of Georgia

Local Agencies

Atlanta Legal Aid
Chatham County District Attorney's Office
Clayton County Solicitor General's Office
Cobb County District Attorney's Office
DeKalb County Fire/Rescue
DeKalb County Police Department
DeKalb County Solicitor General's Office
DeKalb County District Attorney's Office
Gwinnett County Police Department
LaGrange Police Department
Morrow Police Department
Newnan Police Department

IV. Applicable Laws

An important consideration for officers responding to the initial calls for these crimes and the investigators who will be working them is to understand these are criminal acts and not solely civil violations. A list of statutes that may be used in At Risk Adult abuse, neglect and exploitation cases is attached as Appendix J. This Appendix lists Georgia

statutes that have been identified by prosecutors as appropriate in cases involving At Risk Adult abuse, neglect and exploitation. These laws range from murder, false imprisonment, theft crimes, sex crimes, abuse crimes, identity and mortgage fraud, and numerous others. It is important for law enforcement officers to know that other offenses associated with these crimes may be found outside of the Title 16 code section in Titles 10, 17, 19, 24, 30, 31, 35, and 37.

Prosecutors experienced with these cases recommend that that law enforcement officers consider charging a violation of O.C.G.A. § 30-5-8 Elder Exploitation when there is evidence to support such a charge. The officer should consult with the prosecutor to determine if there are additional relevant charges that may be brought. It will be important early in any investigation involving At Risk Adult abuse; neglect or exploitation for law enforcement to coordinate their actions closely with their local prosecutor's to determine what offenses are appropriate to charge at the time of arrest.

V. Best Practices/Policies for Criminal Investigations

Law enforcement agencies around the country are reporting a growing trend of criminals targeting At Risk Adults. The trend is expected to grow as that segment of the population grows. The Washington Post estimates that one in six adults over the age of 65 has been the victim of a financial crime.¹⁰ A 2012 survey conducted by The Investor Protection Trust revealed that family members, caregivers and fraudsters are the top financial exploiters of older Americans.¹¹ Several states, including Georgia, have recognized this growing problem and have acted by creating additional laws and law enforcement protocols to ensure effective and efficient investigations of crimes against At Risk Adults. Georgia law enforcement agencies must respond to this trend by developing agency policies, checklists and training for At Risk Adult investigations. Appendices F, G, H, and I provide a sample agency policy, an Investigation Checklist, and an Unlicensed Personal Care Home/Financial Exploitation Investigation Checklist.

As the life expectancy of the population increases, elder members of the community are likely to suffer chronic illness and disabilities making them more vulnerable to victimization. Many At Risk Adults live alone and are impoverished. The differences in law enforcement and human services agencies' practices and policies pertaining to the investigation and prosecution of these unique crimes may lead to significant disparities in their prevention, protection, reporting, and prosecution. Law enforcement agencies must develop specialized training and specific policies to ensure that these crimes are properly investigated, including adopting inter-agency memoranda of agreement covering investigations of these crimes, similar to those adopted for child abuse investigations.

The purpose of the sample policy provided in the appendix to this report is to provide a template for Georgia law enforcement agencies to use in creating their own At Risk Adult protection policies. It is based on currently accepted practices and intended as a

¹⁰ Singletary, M., "How to Spot Financial Crime Against Seniors," THE WASHINGTON POST (September 15, 2012) at http://articles.washingtonpost.com/2012-09-15/business/35497910_1_financial-exploitation-elder-investment-fraud-financial-planners.

¹¹ Investor Protection Trust. (2012) at http://www.investorprotection.org/downloads/IPT-IPI_EIFFE_Expert_Survey_News_Release_08-15-12.pdf.

guideline for law enforcement personnel when responding to and conducting follow-up investigations of abuse, neglect, and the exploitation of At Risk Adults.

It is critical for each responding officer to understand the importance of the evidence at the scene. The officer must document not only the condition of the scene, but also the physical condition of the victim, by using video recordings and/or photographs. The protection of these victims requires developing a quality criminal case investigation and report for a successful criminal prosecution. A combination of laws and use of a multi-disciplinary investigation provide the best way to assist the prosecutor. In addition to photographs and video, officers and investigators should consider collecting non-traditional forms of evidence, such as soiled linens, and documenting items that are absent, such as an empty refrigerator, in neglect cases. Other non-traditional forms of evidence include: insect infestations; piles of unwashed clothing; the absence of essential utilities such as heat and running water; external padlocks used to lock cabinets containing food or interior/exterior doors; and “slop buckets” for collecting human waste. Prosecutors can use such evidence to successfully prosecute these crimes.

The Committee further recommends that law enforcement agencies utilize deconfliction protocols when investigating these cases. In this context, utilizing deconfliction allows law enforcement to become aware of other criminal investigations regarding the same suspects. For example, a person operating an unlicensed group home who is neglecting the home’s occupants may be operating other homes in other jurisdictions. Consequently, law enforcement personnel should consider submitting and requesting criminal intelligence information from the GBI’s Georgia Information Sharing and Intelligence Center (GISAC). Such requests will be centrally maintained so that, if another law enforcement agency makes a request on the same suspect, the information can be shared between the law enforcement agencies. GISAC has requested that all requests for information be submitted via email to requests@gisac.gbi.ga.gov unless there is an immediate investigative need for the information. In such a case law enforcement may contact GISAC either through their main telephone number, 404-486-6420, or fax number, 404-486-6446. This GISAC email box is monitored 24/7 by the on-call analyst at GISAC including during non-business hours. The proper forms to be used for submitting intelligence reports and intelligence requests are attached as Appendix N.

VI. Training

Training is absolutely critical for the proper recognition of crimes against At Risk Adults, as it will ensure a thorough investigation leading to a successful prosecution. As with many crimes that few law enforcement officers have experience with, it is extremely important that they have the proper training. As the number of cases that have been accepted by Adult Protective Services for investigation has increased from 9,029 cases in 2008 to 15,108 cases in 2012; an increase of over 65%, the need for training cannot be overstated. The numbers of case intakes and of associated abuse, neglect, and misappropriation incidents reported by the state Department of Community Health, Healthcare Facility Regulation office has also increased each year from 2009 through 2012. This includes intakes and incidents at nursing homes, personal care homes and community living facilities.

The most significant training needs in the area of crimes against At Risk Adults are:

- 1) Training which provides law enforcement officers with a foundation in understanding crimes involving At Risk Adults;
- 2) Educating prosecutors and judges regarding crimes involving At Risk Adults;
- 3) Ensuring that exploitation and other crimes against At Risk Adults are treated through the criminal justice system rather than merely as domestic issues or civil matters;
- 4) Mandatory procedures for reporting incidents to appropriate agencies, including to Adult Protective Services;
- 5) Policies requiring law enforcement agencies to investigate all reports of abuse involving At Risk Adults;
- 6) Identifying the services, resources, and assistance that are available for At Risk Adult victims;
- 7) Fostering information sharing between the various agencies working these investigations;
- 8) Assisting prosecutors in overcoming hurdles to a successful prosecution, such as the death of a witness and preserving testimony;
- 9) Instructing law enforcement officers regarding HIPAA rules and regulations; and
- 10) Recommending to the P.O.S.T. Council that At Risk Adult-related crimes be included in basic mandate training.

The patrol function is the backbone of every law enforcement agency. It is critical that first responders receive training in recognizing and investigating At Risk Adult abuse, neglect and exploitation. Patrol officers require training that enables them to immediately recognize the signs and indicators of At Risk Adult situations. Moreover, communication center call-takers who serve as the initial point of contact in such cases must also be included in such training, which should be conducted by the individual law enforcement agency's training staff or at a regional training facility.

Training for first responders and call-takers is so critical that the At Risk Adult Working Group recommended the production of a roll call training video identifying the At Risk Adult indicators. This roll call training video is now in post-production. The Committee recommends that the video be disseminated to all participants at the Georgia Association of Chiefs of Police Summer Conference.

It is imperative that law enforcement investigative personnel must receive critical training so that investigators understand the complexities of At Risk Adult abuse and neglect investigations. It is critical for investigators to recognize that caregivers and family

members are often the perpetrators of such crimes. Often in a police investigation the victim has visible signs of their abuse. Moreover in cases involving At Risk Adults, crimes such as neglect, exploitation, deprivation of essential services, identity theft, and fraud can be just as devastating as a physical attack. Reports of such crimes must be scrutinized and examined with the same intensity, tenacity and resources as an assault and battery, or other crimes of violence.

Training must include basic investigative techniques related to At Risk Adults. It must also introduce other closely related topics such as financial investigations, fraud investigations, and special issues related to testifying in such cases. Commitment and support from all law enforcement CEO's, as they recognize the complexity and importance of investigating these crimes, is essential for success in such investigations.

The numbers demonstrate the dimensions of this problem. Some statistics reference the elder population of Georgia generally; however, the Alzheimer's Association estimated that in 2012, 120,000 Georgians had been diagnosed with Alzheimer's disease.¹² Researchers predict that almost 50% of adults with Alzheimer's disease will experience abuse, neglect, or exploitation.¹³ Many factors give rise to this type of crime. Significantly, a 2009 MetLife study noted that "People over 50 years of age control at least 70% of the net worth of the nation's households," and therefore make obvious and likely targets.¹⁴

The Committee therefore recommends the following:

- 1) That a one-hour block of training focusing on At Risk Adult crimes be presented during the GACP Summer Conference to provide an overview of the problem, to discuss why this is an important issue, and to identify talking points for the agency CEO's to use in discussing the problem with their subordinates, peers, and elected officials;
- 2) That the P.O.S.T. Council mandate a two-hour block of Basic At Risk Adult training for state law enforcement officer certification;
- 3) That the Georgia Association of Chiefs of Police (GACP) require a two-hour block of Basic At Risk Adult training for State Certification;
- 4) That a two-hour block of instruction on Basic At Risk Adult crimes be required for Public Safety Communication Center Call-takers, as they are often the initial point of contact in an investigation;
- 5) That the roll call training video for communications officers and first responders regarding At Risk Adult crimes be distributed;

¹² Alzheimer's Association, 2012.

¹³ Lloyd, J., "MacArthur fellow leads the fight against elder abuse," USA TODAY (Nov. 10, 2011) at <http://tinyurl.com/an8k4pp>.

¹⁴ Metropolitan Life, Study: Broken Trust: Elders, Families and Finances (2009) at <https://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf>.

- 6) That the current At Risk Adult Crime Tactics (ACT) Specialist Certification Course for officers and investigators be expanded from a two day to a three day course, including a prerequisite of completing some form of online introductory training;
- 7) That a 40 hour Train-the-Trainer course in At Risk Adult Crime Tactics (ACT) Specialist be created;
- 8) That each department creates its own policy regarding training and responding to reports of elder abuse. This policy should include a mechanism for the annual reporting of the number of cases opened, the type of cases, whether the cases resulted in death or serious injury, and the status of the prosecution of all such cases as a part of the State Certification program; and
- 9) That training be provided to law enforcement CEO's, including an overview of this paper, at the GACP 2013 Summer Conference.

VII. 2013 Legislative Session

The Georgia Code already contains some provisions covering At Risk Adult Abuse and Elder Abuse. In the 2013 Legislative Session, House Bill 78 was introduced and passed by the House and the Senate. The final "As Passed" version of House Bill 78 is attached as Appendix P. The changes mandated by the passage of House Bill 78 will greatly enhance the likelihood of successful criminal prosecutions. The following brief summary of relevant provisions of House Bill 78 is offered to assist prosecutors and law enforcement in protecting At Risk Adults:

- 1) O.C.G.A. § 16-5-101 - Instead of just addressing "cruelty to a person over 65," the revised section now addresses "cruelty to a disabled adult," and "an elder person or a resident of a long term care facility." Punishment for this crime is 1 to 20 years.
- 2) O.C.G.A. § 16-5-102 (a) - Knowingly and willfully exploiting a disabled adult, elder person or resident. Punishment for this crime is 1 to 20 years.
- 3) O.C.G.A. § 16-5-102 (b) - Threatening, intimidating, or attempting to intimidate a disabled adult, elder person or resident who is the subject of a report, a witness, or cooperating with an investigation. This crime is a misdemeanor of a high and aggravated nature.
- 4) O.C.G.A. § 16-5-102 (c) - Any person that willfully and knowingly obstructs or impedes an investigation. This crime is a misdemeanor of a high and aggravated nature.
- 5) O.C.G.A. § 24-13-130 – Depositions. This section permits depositions to be taken if the witness is unable to testify at a trial or proceeding or if the person is 78 or older.

6) Moves certain criminal provisions from Title 30 to Title 16.

7) Additional records check requirements for licensing.

The Committee also makes one additional recommendation for a future legislative session. The General Assembly should consider increasing the classification of and punishment for violation of O.C.G.A. § § 16-5-102(b) and 16-5-102 (c) from those of misdemeanors of a high and aggravated nature to those of felonies. The Committee makes this recommendation because the victims of these crimes are already vulnerable and suffering and consequently they are easily threatened and intimidated.

VIII. HIPAA

Federal law protects health information in the Health Insurance Portability and Accountability Act (HIPAA). While this legislation is not new, many law enforcement officers are unfamiliar with the provisions that relate to criminal investigations. HIPAA does authorize the release, without consent, of medical information regarding individuals who are victims of a crime to law enforcement. Specifically, federal law provides:

45 C.F.R. § 164.512 (f) HIPAA Exception for Law Enforcement

(f) Standard: Disclosures for law enforcement purposes.

(3) A covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime.

There is also an exception for coroners attempting to identify a deceased person or determine their cause of death. Appendix K contains additional information regarding these provisions of federal law.

HIPAA makes no provision for obtaining the records of a witness or a suspect should they become necessary as a part of the investigation. Officers may attempt to obtain medical records of a witness or suspect by obtaining consent. A copy of a consent form that may be adapted for individual department use is also attached in Appendix K. In the event the individual will not consent, the officer should obtain a search warrant. The Committee recommends that each agency establish a point of contact with their local hospitals and health care agencies to establish a procedure for coordinating the release of information and/or search warrants.

IX. Public Awareness

The Committee has developed a power point presentation for use by law enforcement executives when meeting with civic groups or other interested members of the public. This is an important tool for an agency CEO when discussing the issue of At Risk Adult abuse. This power point presentation provides a set of talking points for the CEO to use

when interacting with community groups. The Committee recommends this presentation be made available at the GACP 2013 Summer Conference.

Additionally, in another effort to provide public information on this important topic, a one hour program on At Risk Adult abuse has been filmed by Georgia Public Broadcasting (GPB) and will be aired May 20, 2013.

X. Conclusion and Recommendations

The Committee concludes that crimes against At Risk Adults are serious criminal offenses requiring the same degree of serious and diligent investigation as any other felony crime. This type of crime is often misunderstood and seriously underreported. We anticipate that reports of At Risk Adult abuse will increase as the population ages and such victims come to the attention of mandated reporters. The size of Georgia's At Risk Adult population is expected to grow significantly in the next 20 years. To ensure that first responders and investigators will be prepared to recognize and investigate such crimes effectively, we make the following recommendations regarding At Risk Adult abuse criminal investigations:

A. Policy

Law enforcement agencies should promulgate a policy that addresses governing crimes against At Risk Adults. The policy should be agency specific and consider the size, resources and expertise of the agency. The Committee recommends the following:

- 1) The sample policy attached as Appendix I should be used as a starting point for the creation of agency policy on At Risk Adult crimes.
- 2) The policy should focus on a multi-disciplinary approach to investigating these types of crimes, including developing and executing a written protocol with other state human services agencies.
- 3) The policy should include a discussion of financial exploitation and related crimes that are often a critical component of investigations, even when the initial report appears to include only abuse or neglect.

B. Training

Law enforcement CEO's should be presented with information regarding At Risk Adult crimes to ensure proper support and commitment to these criminal investigations by agency personnel. CEO's should consider requiring mandatory training for first responders and investigators. The Committee makes the following training recommendations:

- 1) That a one-hour block of training focusing on At Risk Adult crimes be presented during the GACP Summer Conference to provide an overview of the problem, to discuss why this is an important issue, and to identify talking points for the agency CEO's to use in discussing the problem with their subordinates, peers, and elected officials;

- 2) That the P.O.S.T. Council mandate a two-hour block of Basic At Risk Adult training for state law enforcement officer certification;
- 3) That the Georgia Association of Chiefs of Police (GACP) require a two-hour block of Basic At Risk Adult training for State Certification;
- 4) That a two-hour block of instruction on Basic At Risk Adult crimes be required for Public Safety Communication Center Call-takers, as they are often the initial point of contact in an investigation;
- 5) That the roll call training video for communications officers and first responders regarding At Risk Adult crimes be distributed;
- 6) That the current At Risk Adult Crime Tactics (ACT) Specialist Certification Course for officers and investigators be expanded from a two day to a three day course, including a prerequisite of completing some form of online introductory training;
- 7) That a 40 hour Train-the-Trainer course in At Risk Adult Crime Tactics (ACT) Specialist be created;
- 8) That each department creates its own policy regarding training and responding to reports of elder abuse. This policy should include a mechanism for the annual reporting of the number of cases opened, the type of cases, whether the cases resulted in death or serious injury, and the status of the prosecution of all such cases as a part of the State Certification program; and
- 9) That training be provided to law enforcement CEO's, including an overview of this paper, at the GACP 2013 Summer Conference.

C. Reporting

Law enforcement agencies should utilize a uniform method of reporting and recording the number of At Risk Adult crimes investigated. To achieve this, the Committee makes the following recommendations:

- 1) GACP should develop a mechanism to provide for the annual reporting of the number of cases opened, the type of case, whether the case resulted in death or serious injury, and the status of the prosecution of the case.
- 2) Agencies must ensure that these crimes are classified and reported separately, and not as some other form of crime such as a theft. Tracking this specific criminal activity where the victim is an At Risk Adult may encourage the devotion of more resources to this area by the legislature and the community.
- 3) Reporting requirements of At Risk Adult crimes becomes a condition of State Law Enforcement Certification.

D. Legislation

House Bill 78 has passed through both houses of the state legislature and is waiting for the Governor to sign it into law. The final “as passed” version of House Bill 78, attached as Appendix P, as signed by the Governor will be included with materials provided to law enforcement CEO’s at the GACP 2013 Summer Conference. The Committee recommends future legislation to increase the punishment for violations of O.C.G.A. § 16-5-102 (b) and (c) from a misdemeanor of a high and aggravated nature to a felony.

In conclusion, law enforcement agencies must utilize every resource available to assist At Risk Adults and prevent the further victimization of our most vulnerable adult citizens. With the proper recognition of these crimes, appropriate training, and the partnering of resources available through other agencies, the law enforcement community will be in a sound position to investigate and prosecute the ever-increasing number of these crimes, which are becoming more regularly reported as our population ages.

These victims are citizens of the State of Georgia, as well as neighbors and family members. It is our responsibility to make sound decisions regarding the training needs identified by this Committee. These decisions rest with each law enforcement agency and its CEO. Implementing these recommendations will result in law enforcement professionals who are able to recognize and investigate these serious crimes.

Appendices

| | |
|------------|--|
| Appendix A | Reporting Abuse of At Risk Adults Information |
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| Appendix C | ANE Reporting Chart – By Setting |
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Appendix A

Reporting Abuse Of At Risk Adults in Georgia

IN THE COMMUNITY (Non-Institutional)

For suspected abuse, neglect or exploitation of At Risk Adults (adults 65 years of age or older and adults 18 years of age or older with any disability) **who are not residents of long-term care facilities**, please contact:

ADULT PROTECTIVE SERVICES CENTRAL INTAKE UNIT

BY PHONE: 1-866-552-4464 & Follow Prompts

Voice messages may be received 24/7 - Central Intake available M-F, 8:00-5:00

ON-LINE: <http://aging.dhs.georgia.gov/adult-protective-services>

BY FAX: For fax form: <http://aging.dhs.georgia.gov/adult-protective-services>

Fax form to: 770-408-3001

IN LONG-TERM CARE FACILITIES

For suspected abuse, neglect or exploitation or residents, please contact:

HEALTHCARE FACILITY REGULATION COMPLAINT INTAKE

BY PHONE: 1-800-878-6442

Voice messages may be received 24/7 - Intake personnel available M-F, 8:00-5:00

ON-LINE: <http://dch.georgia.gov/hfr-find-facilityfile-complaint>

Click on link, "File a Complaint"

BY FAX: Information may be faxed to: 404-657-5731

FOR EMERGENCY CALL 911

**PROTECT,
PREVENT,
PROSECUTE.**

Crimes against At Risk Adults are felonies.

Call 911 immediately to report abuse, neglect or exploitation to law enforcement and

The Division of Aging Services at:

1-866-552-4464

Appendix B

Adult Protective Services Case Referrals 2008-2012

These numbers represent calls received by APS accepted for investigation and intervention.

2008: 9,029

2009: 10,702 up 18.53% from 2008

2010: 11,576 up 8.17% from 2009 up 28.21% from 2008

2011: 12,378 up 6.93% from 2010 up 37.09% from 2008

2012: 15,108 up 22.06% from 2011 up 67.33% from 2008

Appendix C

ANE Reporting Chart – By Setting

| IN ADDITION TO MEETING REPORTING MANDATES, ALSO IMMEDIATELY CONTACT LOCAL LAW ENFORCEMENT. Highlighted entities are mandated by law to receive reports of abuse, neglect & exploitation of At Risk Adults from mandated reporters. IF A CRIME IS SUSPECTED – CONTACT LAW ENFORCEMENT IMMEDIATELY | | | |
|--|---|---|--|
| SETTING | REPORT TO | INVESTIGATES/ACTIONS | TO OBTAIN RECS |
| Community | Division of Aging Services *Adult Protective Services/ APS 1-866-552-4464 & follow prompts | I: Reports of abuse, neglect & exploitation of At Risk Adults. A: Substantiated abuse reported to law enforcement. Provide services to consenting clients. | Law enforcement: Record request on letter head. All others: Subpoena or court order by any court of competent jurisdiction. |
| Personal Care Home, Assisted Living Facility, Community Living Arrangements | *Healthcare Facility Regulation/ HFR Ph: (404)657-5726, (404) 657-5728 1-800-878-6442 On-line: http://dch.georgia.gov Follow link to Healthcare Facility Regulation – File Complaint. | I: Reports of violations of the State Licensure and Federal Certification Regulations and reports of abuse, neglect or exploitation. A: Corrective action plan with facility and/or reports to law enforcement on substantiated cases. May request assistance from APS, Ombudsman or Law Enforcement. | Law Enforcement: Request on letterhead. |
| Nursing Home | *Healthcare Facility Regulation/ HFR Ph: (404)657-5726, (404) 657-5728 1-800-878-6442 On-line: http://dch.georgia.gov Follow link to Healthcare Facility Regulation – File Complaint. | I: Reports of violations of the State Licensure and Federal Certification Regulations and reports of abuse, neglect or exploitation. A: Corrective action plan with facility and/or reports to law enforcement on substantiated cases. May request assistance from APS, Ombudsman or Law Enforcement. | Law Enforcement: Request on letterhead. |
| Hospitals Home Health Services | *Healthcare Facility Regulation/ HFR Ph: (404)657-5726, (404) 657-5728 Home Health Hotline 1-800-326-0291 http://dch.georgia.gov | I: Reports of abuse occurring within any of the listed facilities or services. May involve other offices within DHR and/or Law Enforcement. A: Corrective Action plan with facility and/or reports to law enforcement on substantiated cases. | Law Enforcement: Request on letterhead. |
| Long-Term Care Facilities | Community Long-Term Care Ombudsman [not mandated reporters] 1-866-552-4464 & follow prompts http://www.georgiaombudsman.org | I: Any resident concern/issue. A: Resolution of resident issue with resident consent . May involve others including law enforcement with resident consent . | Only with consent of resident. |
| | Department of Behavior Health and Developmental Disabilities Consumer Services (investigates only if consumer receiving services funded through DBH). Ph.: (404) 657-5964 Fax: (404) 657-2187 http://dbhdd.georgia.gov | I: Reports relating to residents in facilities and participants in service programs. May involve HFR, Regional Board, Division of Aging and Law Enforcement A: Corrective action plan with facility and/or reports to law enforcement on substantiated cases. | Signed authorization or subpoena from court of competent jurisdiction. |

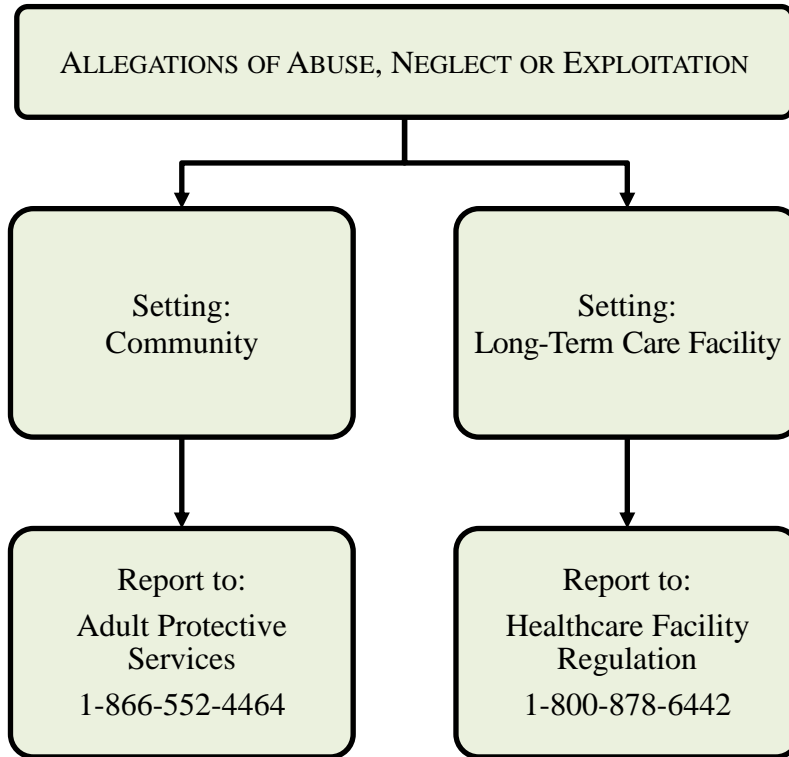
ANE Reporting Chart – By Setting

| OFFENSE | REPORT TO | INVESTIGATES | ACTIONS |
|------------------------------|---|---|--|
| Consumer Fraud | Governor’s Office of Consumer Protection Ph. :(404) 651-8600, 1-800-869-1123 http://consumer.georgia.gov | I: Reports of Consumer Fraud in the areas of telemarketing fraud, home repair scams, phony charities and other rip-offs. | A: Civil and criminal actions when possible. |
| Social Security Fraud | SSA. Office of the Inspector General Ph: 404-562-5540, 1-800-269-0271 http://www.ssa.gov/oig/hotline | I: Reports of Social Security fraud. | A: Civil or criminal actions when possible. |
| Medicaid Fraud | Office of the Inspector General, Department of Community Health Program Integrity Unit Ph: (404) 463-7590, 1-800-533-0686 oiganonymous@dch.ga.gov | I: Reports of Medicaid Fraud. | Civil or criminal actions when possible. May refer to State Medicaid Fraud Control Unit. |
| Food Stamp Fraud | Office of the Inspector General Department of Human Services Benefits Recovery Unit Ph: (404) 463-5495, 1-877-423-4746 inspectorgeneralhotline@dhr.ga.gov | I: Reports of Electronic Benefits Transfer Card fraud (food stamps). | Administrative, civil or criminal actions when possible. If criminal – referred to local district attorney’s office. |

This form is intended only as a tool to navigate the various entities encountered when investigating cases of abuse, neglect & exploitation of older adults and adults with disabilities (At Risk Adults). DAS has attempted to ensure the accuracy of the information provided.

MANDATED REPORTING:

IF A CRIME IS SUSPECTED – CONTACT LAW ENFORCEMENT IMMEDIATELY



Appendix D

Healthcare Facility Regulation Case Referrals 2008-2012

| NURSING HOME ABUSE, NEGLECT AND MISAPPR INTAKES | | | | | | | | | |
|--|--------------------|--------------|---------|---------|-----------------------|-------------|---------|---------|----------------------|
| | TOTAL # INTAKES | # COMPLAINTS | | | TOTAL # COMPLAINTS | # INCIDENTS | | | TOTAL # INCIDENTS |
| | | ABUSE | NEGLECT | MISAPPR | | ABUSE | NEGLECT | MISAPPR | |
| CY09 | 3490 | 175 | 304 | 52 | 531 | 1988 | 183 | 788 | 2959 |
| CY10 | 3497 | 123 | 349 | 34 | 506 | 2000 | 232 | 759 | 2991 |
| CY11 | 3764 | 137 | 451 | 47 | 635 | 2018 | 255 | 856 | 3129 |
| CY12 | 3995 | 134 | 435 | 59 | 628 | 2325 | 266 | 776 | 3367 |
| | | | | | | | | | |
| PERSONAL CARE HOME ABUSE, NEGLECT AND MISAPPR INTAKES | | | | | | | | | |
| | TOTAL # INTAKES | # COMPLAINTS | | | TOTAL # COMPLAINTS | # INCIDENTS | | | TOTAL # INCIDENTS |
| | | ABUSE | NEGLECT | MISAPPR | | ABUSE | NEGLECT | MISAPPR | |
| CY09 | 611 | 210 | 85 | 111 | 406 | 142 | 9 | 54 | 205 |
| CY10 | 726 | 200 | 139 | 126 | 465 | 202 | 10 | 49 | 261 |
| CY11 | 708 | 197 | 140 | 99 | 436 | 200 | 8 | 64 | 272 |
| CY12 | 885 | 206 | 234 | 105 | 545 | 245 | 29 | 66 | 340 |
| | | | | | | | | | |
| COMMUNITY LIVING ARR ABUSE, NEGLECT AND MISAPPR INTAKES | | | | | | | | | |
| | TOTAL # INTAKES | # COMPLAINTS | | | TOTAL # COMPLAINTS | # INCIDENTS | | | TOTAL # INCIDENTS |
| | | ABUSE | NEGLECT | MISAPPR | | ABUSE | NEGLECT | MISAPPR | |
| CY09 | 68 | 21 | 9 | 6 | 36 | 29 | 1 | 2 | 32 |
| CY10 | 54 | 17 | 13 | 5 | 35 | 14 | 2 | 3 | 19 |
| CY11 | 97 | 29 | 16 | 4 | 49 | 38 | 6 | 4 | 48 |
| CY12 | 137 | 43 | 24 | 5 | 72 | 52 | 9 | 4 | 65 |
| | | | | | | | | | |

Appendix E

Community Living Options

Comparison of: Personal Care Homes, Community Living Arrangements, Private Home Care, & Boarding Homes

Personal Care Home: “any dwelling, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one or more personal services for two or more adults who are not related to the owner or administrator by blood or marriage; ‘Personal Services’ includes, but is not limited to, individual assistance with or supervision of self-administered medication, assistance with ambulation and transfer, and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting;” Authority O.C.G.A. Secs. 31-2-4, 31-7-2.1, 37-7-12. (Some homes call themselves “Assisted Living” facilities.)

(For more information, contact DCH Healthcare Facility Regulation, Personal Care Home Program at (800) 878-6442.)

Community Living Arrangement: “any residence, whether operated for profit or not, that undertakes through its ownership or management to provide or arrange for the provision of daily personal services, supports, care, or treatment exclusively for two or more adults who are not related to the owner or administrator by blood or marriage and whose residential services are financially supported, in whole or in part, by funds designated through the Department of Human Resources, Division of Mental Health, Developmental Disabilities, and Addictive Diseases. ‘Personal services’ means provision of services, on a daily basis, that include, but are not limited to, individual assistance with or supervision of medications, ambulation and transfer, and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting. ‘Supports, care, or treatment’ means specific services that are provided to the resident in the Community Living Arrangement, coordinated by the administrator as necessary, or reasonably requested by the resident and that include but are not limited to: mental health services, habilitation, rehabilitation, social services, medical, dental, and other health care services, education, financial management, legal services, vocational services, transportation, recreational and leisure activities, and other services required to meet a resident’s needs.” Authority O.C.G.A. Sec. 37-1-22

(For more information, contact DCH Healthcare Facility Regulation, Personal Care Home Program at (800) 878-6442.)

Private Home Care: “‘Private home care provider’ or ‘provider’ means any person, business entity, corporation, or association, whether operated for profit or not for profit, that directly provides or makes provision for private home care services through: 1) its own employees or agents; 2) contractual arrangements with independent contractors; or 3) referral of other persons to render home care services, when the individual making the referral has ownership or financial interest in the delivery of those services by those other persons who would deliver those services. ‘Private home care services’ means those items and services provided at a patient’s residence that involve direct care to that patient and includes, without limitation, any or all of the following: 1) nursing services, provided that such services can only be provided by a person licensed as a Registered Professional Nurse or licensed Practical Nurse in accordance with applicable professional licensing statutes and associated rules; 2) personal care tasks; and 3) companion or sitter tasks. Private home care services shall not include physical, speech, or occupational therapy; medical nutrition therapy; medical social services; or home health aide services provided by a home health agency. ‘Residence’ means the place where an individual makes that person’s permanent or temporary home, whether that person’s own apartment or house, a friend or relative’s home, or a personal care home, but shall not include a hospital, nursing home, hospice, or other health care facility licensed under Chapter 31-7-1 et seq. ‘Personal care tasks’ means assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating; and may include but is not limited to proper nutrition, home management, housekeeping tasks, ambulation and transfer, and medically related activities, including the taking of vital signs only in conjunction with the above tasks. ‘Companion or sitter tasks’ means the following tasks which are provided to elderly, handicapped, or convalescing individuals: transport and escort services; meal preparation and serving; and household tasks essential to cleanliness and safety.” Authority O.C.G.A. Sec. 31-7-300 et seq.

(For more information, contact DCH Healthcare Facility Regulation, Home Health Care Program at (800) 878-6442.)

Boarding Home: A boarding home is a congregate living arrangement between landlord and tenant in which the tenant may share not only the common areas of the home but may also share a bedroom and bath

with other tenants. The provision of laundry services, transportation, money management, and activities are established by the landlord and tenant. The landlord shall not provide supervision of person, supervision of medications, assistance with activities of daily living, or nursing services. Otherwise, the home would fall under the guidelines of a Personal Care Home or Community Living Arrangement and require a permit issued by the State of Georgia. (Some jurisdictions use the term “Multi-Family Dwelling.”)

(For more information, contact the local Business License and Inspections Department or Planning Commission.)

Host Home: The private home of an individual or a family, whether owned or leased, in which residential supports are provided to one or two adult individuals, defined 19 years of age and above with developmental disability. Individuals should not be related to the occupant owner or lessee by blood or marriage. The occupant owner or lessee shall not be the guardian of any person served on their property nor the agent in such person’s advance directive for health care. Host homes are not required to be licensed and oversight is provided by the Department of Behavioral Health and Developmental Disabilities (DBHDD). Issues involving possible Client’s Rights violations should be reported to the applicable DBHDD Regional Office or the Georgia Advocacy Office at (800) 537-2329.

(For more information, contact the DBHDD Office of Developmental Disabilities at (404) 463-8037.)

Every effort has been made to ensure information is accurate. For further information, contact Healthcare Facility regulation.

Community Living Options

Comparison of: Personal Care Homes, Community Living Arrangements, Private Home Care, & Boarding Homes

| GEORGIA REQUIREMENTS | Personal Care Home | Assisted Living Community | Community Living Arrangement | Private Home Care Provider | Boarding Home | Host Home |
|--|--------------------|---------------------------|------------------------------|----------------------------|---------------|-----------|
| I. Minimum Standards | | | | | | |
| State Licensure | ✓ | ✓ | ✓ | ✓ | | |
| Business License | 1 | 1 | 1 | ✓ | 1 | 1 |
| Zoning Clearance | 1 | 1 | 1 | | 1 | 1 |
| Physical Plant Standards | ✓ | ✓ | ✓ | | 1 | 1 |
| Fire Safety Standards | 1 | 1 | 1 | | 1 | 1 |
| Electrical Safety Standards | 1 | 1 | 1 | | | |
| Minimum Training (CPR, First Aid, etc.) | ✓ | ✓ | ✓ | | | ✓ |
| Criminal Records Check | ✓ | ✓ | ✓ | | | ✓ |
| Fingerprints Check | ✓ | ✓ | ✓ | | | ✓ |
| Supervision of Staff | ✓ | ✓ | ✓ | ✓ | | ✓ |
| Administrator | ✓ | ✓ | ✓ | ✓ | | ✓ |
| Bonded | | | | 2 | | |
| Food Service Permit | 3 | 3 | | | | |
| Maximum Bed Capacity | | *10 | 4 | | | 8 |
| II. Services | | | | | | |
| Resident/Client Rights | ✓ | ✓ | ✓ | ✓ | | ✓ |
| 24 hr. Supervision of clients | ✓ | | 5 | 6 | X | ✓ |
| Medication Supervision | ✓ | ✓ | ✓ | 6 | X | ✓ |
| Assistance with Activities of Daily Living | ✓ | ✓ | 5 | 6 | X | ✓ |
| Meals | ✓ | ✓ | ✓ | 6 | 7 | ✓ |
| Transportation | 5 | 5 | 5 | 6 | 7 | ✓ |
| Laundry | 5 | 5 | 5 | 6 | 7 | ✓ |
| Management of Personal Funds | 5 | 5 | 5 | 6 | 7 | ✓ |
| Activities | ✓ | ✓ | ✓ | 6 | 7 | |
| Nurse on Staff | | | 5 | 6 | | |
| Nursing Services | X | X | 5 | 6 | X | |
| III. Monitoring | | | | | | |
| Annual Inspection/Auditing | ✓ | ✓ | ✓ | ✓ | | 9 |
| Ombudsman Advocacy | ✓ | ✓ | ✓ | | | |
| Complaint Investigations as Needed | ✓ | ✓ | ✓ | ✓ | | 9 |

✓ indicates services that must be provided in order to fulfill licensing requirements

X indicates services that are not allowed to be provided under that licensure category

1 – requirements vary by county codes and number of residents/clients. Contact the local Business License and Inspections Department, Planning and Zoning Commission, and/or local Fire Department.

2 – only if employees have unlimited access to the client's personal funds

3 – for homes serving twenty-five (25) or more residents/clients

4 – maximum capacity of 6 residents/clients

5 – services which are dependent upon the resident's/client's admission agreement, care plan, or "individual services plan"

6 – services which are dependent upon the client's service agreement (e.g. companion sitter, personal care, nursing services)

7 – services which are dependent upon the tenant's rental agreement

8 – 2 residents or less

9 – Periodic evaluations by external quality review organization (Delmarva Foundation). Critical incidents reported to DBHDD

*10 – Minimum of 25 residents

Appendix F

At-risk Adult Abuse Investigation Worksheet (Page 1)

Case Number: _____ Today's Date: _____ Date of Incident: _____

Victim's Name: _____

Victim's Street Address: _____ City, State Zip: _____

Known Medical Conditions? _____

Known Medications? _____

Abuse, Neglect and Exploitation Checklist
 (Include: No, Yes, Unknown. Be sure to describe location, size, odor, etc. of injury)

| | |
|---|--|
| Victim's Self Report | |
| Bruises | |
| Black Eyes | |
| Lacerations | |
| Ligature/Restraint Marks | |
| Open Wounds | |
| Untreated Injuries | |
| Injuries (in various stages of healing) | |
| Broken Bones | |
| Burns | |
| Neck Injuries | |
| Bite Marks | |
| Over/Under Medicated | |
| Broken Eye Glasses | |
| Hair Pulled Out | |
| Uncooperative Caretaker | |
| Weapons | |

Sexual Abuse

| | |
|------------------------------|--|
| Victim's Self Report | |
| Bruises-Breasts/Genital Area | |
| Torn/Bloody Underclothes | |
| Difficulty Walking/Sitting | |
| Sexually Transmitted Disease | |

Neglect/Cruelty

| | |
|---------------------------------------|--|
| Victim's Self Report | |
| Dehydration/Malnutrition | |
| Untreated Health Conditions | |
| Failure to Get Medical Care | |
| Failure to Provide Medications | |
| Failure to Provide Essential Services | |
| Lack of Assistive Devices | |
| Abandonment | |
| Inappropriate Clothing | |
| Inadequate Heating/Cooling | |
| Bed Sores | |
| Unsafe Environment | |
| Fleas/Lice/Roaches/Rodents | |
| Fecal/Urine Stained Bedding | |
| Scalded Skin (from urine) | |
| Lock/Chains on interior doors | |

At-risk Adult Abuse Investigation Worksheet (Page 2)

Abuse, Neglect and Exploitation Checklist (CONTINUED)

(Include: No, Yes, Unknown. Be sure to describe location, size, odor, etc. of injury)

Emotional Abuse

| | |
|--------------------------|--|
| Victim's Self Report | |
| Upset/Agitated | |
| Withdrawn/Non-responsive | |
| Unusual Behavior | |

Financial Exploitation

| | |
|--|--|
| Unemployed Adult(s) - resides in home | |
| Victim's Self Report | |
| Sudden Changes in Banking Habits | |
| New Names on Signature Card(s) | |
| Unauthorized Withdrawal(s) | |
| Abrupt Changes in Will | |
| Disappearance of Funds/Possessions | |
| Unpaid Bills/Adequate Funds | |
| Forged Signature for Transactions | |
| Appearance of Uninvolved Relative | |
| Sudden Transfer of Assets | |
| Unlicensed Personal Care Home | |

Self Neglect

| | |
|------------------------------|--|
| Dehydration/Malnutrition | |
| Lack of Medical Attention | |
| Unsafe Living Conditions | |
| Unsanitary Living Conditions | |
| Inappropriate Clothing | |
| Lack of Assistive Devices | |
| Inadequate Housing | |

All the items listed above are RED FLAGS and could indicate abuse. If any are encountered, investigate.

**GET PHOTOGRAPHS! GET PHOTOGRAPHS! GET PHOTOGRAPHS!
GET PHOTOGRAPHS**

Below are examples of applicable statutes for crimes against At Risk Adults- there are many others. Refer to Official Code of GA Annotated for additional statutes and to ensure accuracy.

| | | | |
|---------------------------------|--|----------------------------------|--|
| O.C.G.A. §16-5-1 | Murder | O.C.G.A. §16-7-21 | Criminal Trespass |
| O.C.G.A. §16-5-2 | Voluntary Manslaughter | O.C.G.A. §16-7-23 | Criminal Damage to Property |
| O.C.G.A. §16-5-3 | Involuntary Manslaughter | O.C.G.A. §16-8-1-16-8-12 | Theft Offenses |
| O.C.G.A. §16-5-20(e) | Simple Assault (H&A) | O.C.G.A. §16-8-12(a)(3) | Theft by Fiduciary (Felony – Any dollar amount) |
| O.C.G.A. §16-5-21 | Aggravated Assault | O.C.G.A. §16-8-100 et seq | GA Residential Mortgage Fraud ACT |
| O.C.G.A. §16-5-23(c) (g) | Simple Battery (H&A) | O.C.G.A. §16-9-6 | Breach of Fiduciary Obligation against person who is 65 or older |
| O.C.G.A. §16-5-23.1 (j) | Battery (H&A) | O.C.G.A. §16-9-20 | Deposit Account Fraud |
| O.C.G.A. §16-5-23.1 (k) | Battery (Felony) If committed by employee of licensed facility | O.C.G.A. §16-9-30 | Illegal Use of Financial Transaction Card |
| O.C.G.A. §16-5-24 | Aggravated Battery | O.C.G.A. §16-9-32 | Forgery of Financial Transaction Card |
| O.C.G.A. §16-5-40 | Kidnapping | O.C.G.A. §16-9-33 | Financial Transaction Card Fraud |
| O.C.G.A. §16-5-41 | False Imprisonment | O.C.G.A. §16-9-37 | Unauthorized Use of Financial Transaction Card |
| O.C.G.A. §16-5-91 | Aggravated Stalking | O.C.G.A. §16-9-52 | Improper Solicitation of Money |
| O.C.G.A. §16-5-100 | Cruelty to Person > 65 | O.C.G.A. §16-9-54 | Fraudulent Telephone Solicitation |
| O.C.G.A. §16-6-1 | Rape | O.C.G.A. §16-9-120 | Identity Fraud |
| O.C.G.A. §16-6-2 | Sodomy; Aggravated Sodomy | O.C.G.A. §16-9-121.1 | Aggravated Identify Fraud |
| O.C.G.A. §16-6-5.1 | Sexual Assault (In Licensed Facility) | O.C.G.A. §10-1-393 | Unfair/Deceptive Practices |
| O.C.G.A. §16-6-22.2 | Aggravated Sexual Battery | O.C.G.A. §10-1-393.6 | Unlawful Telemarketing |
| O.C.G.A. §19-13-1 | Family Violence Act | O.C.G.A. §10-1-850 | Unfair or Deceptive Practices Towards the Elderly |
| O.C.G.A. §30-5-1 et seq | Protection of Disabled Adults & Elder Persons Act | O.C.G.A. §10-5B-6 | Abusive Telemarketing (If targeting seniors – can double penalties) |
| O.C.G.A. §30-5-8 | Penalties for abuse, neglect & exploitation of At Risk Adults | O.C.G.A. §17-3-2.2 | Statute of limitations is 15 years when victim > 65 generally |
| O.C.G.A. §31-8-80 et seq | Long-term Care Facility Resident Reporting Act | O.C.G.A. §37-1-100 | Misdemeanor to violate title 37 |
| O.C.G.A. §31-5-8 | Misdemeanor to violate title 31 | | |

**Reporting Abuse, Neglect, & Exploitation in the HOME:
Adult Protective Services
Central Intake: 404-657-5250 or 1-888-774-0152**

**Reporting Abuse, Neglect & Exploitation in a LONG-TERM CARE FACILITY:
Healthcare Facility Regulation
Central Intake: 404-657-5728 or 1-800-878-6442**

Appendix G

At-Risk Adult Physical Abuse/Neglect Investigation Checklist

Detective: _____ LPD Case Number: _____

- _____ Ensure that victim has received medical attention if needed.
- _____ Complete DHR Elder Abuse Investigation Checklist.
- _____ Identify and interview officer(s) who have conducted the preliminary investigation for pertinent information.
- _____ Ensure supervisor page has been completed with information about the incident.
- _____ Ensure that you have identified and interviewed the following people if applicable:
 - _____ Complainant
 - _____ Victim
 - _____ Caregiver and/or Guardian
 - _____ Potential Witnesses (family members, neighbors, etc.)
 - _____ Any in-home health care professional
 - _____ All other applicable personnel (fire, EMS, etc.)
- _____ Identify victim's normal daily activities.
- _____ Obtain a 24 hour timeline.
- _____ Attempt to identify patterns of abuse over an extended period.
- _____ If power of attorney exists, obtain a copy of this document.
- _____ Obtain written consent from legal occupant/owner or obtain search warrant prior to searching any private property scene.
- _____ Obtain list of medications, prescribing physicians, and distributing pharmacies.
- _____ Obtain signed medical release form or search warrant for medical records for past five (5) years.
- _____ Complete photos of victim(s) and document injuries utilizing body maps form.
- _____ Complete scene photos.
- _____ Collect evidence if applicable.
- _____ Complete investigative canvass within 24 hours.
- _____ Check criminal histories of all persons 17 years of age or older who live in the household.
- _____ Notify Adult Protective Services while on scene by calling 1-866-552-4464.
Obtain operator name and extension: _____

Appendix H


Unlicensed Personal Care Home/Financial Exploitation Checklist

- How many “911” calls to location (EMS/law enforcement)?
- If so, caller? (Residents? Owner/Operator? Neighbors?) Reasons?
- If “911” for EMS – related to conditions, injuries, behavior, assaults, meds, etc. (not taking/getting)?
- Who is owner?
- Any other properties being operated/rented/leased by owner?
- Is entity registered with Secretary of State?
- Is entity licensed through the Department of Community Health, Healthcare Facility Regulation Division (HFR)?
- Should entity be licensed through HFR?
- Does entity have business license? Certificate of occupancy?
- Is anyone providing oversight for residents? If so, who and what are qualifications? (Other residents? – may be requiring residents to work)
- Meds? If so, where stored and how distributed - by residents or with assistance?
- If receiving meds - prescribed by whom? Filled where?
- **What is the source of income for residents’ rent payments?**
- Do residents receive food stamps? If so, who has possession?
- Do residents receive Social Security?
- If receiving social security benefits, what is the monthly amount? How much \$ do the residents get to keep?
- Do residents receive M’Caid? If so, how much? How are funds used?
- Where were residents prior to living at this location?
- How long at this location?
- **Are there rental agreements stating what residents receive in exchange for monthly rent?**
- How did residents learn of this “boarding home”, “foundation”, “mission”, “charity”, etc?
- Is owner/operator recruiting and/or conducting direct marketing to local hospitals, psychiatric facilities, adult day centers, etc.?
- If so, to whom and as what is he/she marketing the home and services?
- Does owner/operator have website or listing on website advertising “assisted living”, “personal care homes”, etc?
- Are there any forms/documents suggesting residents are receiving any services at the location (home health, day services, etc.?)
- Is there food in the refrigerator? Cabinets? Water running?
- What is the overall condition of the residence (interior/exterior)?
- How do residents get food and get to appointments - transportation?
- What type of food is in the residence (appropriate for dietary needs and eating abilities)?
- Source of food (food bank, outdated from local grocery, etc.)?
- Do residents work outside the home?
- Are there other providers (home health, physical therapy, mental health providers, etc.) at the location during the day?
- How many residents? Code violations?
- Does owner/operator have joint banking accounts with residents?
- How is money from monthly benefits spent to benefit residents?
- Whose name is on accounts for electricity, water, gas, etc? If resident’s (current or former), is resident aware?
- Who has control of resident’s important documents (EBT, social security card, documentation, etc)?
- If suspect location determined to be an unlicensed personal care home, has Healthcare Facility Regulation (HFR) been contacted for a determination (***strongly suggest coordinating a visit with LE, HFR & any other pertinent agencies or residents may be relocated before HFR can conduct a survey***)

Appendix I

LaGrange Police Department

At Risk Adult Investigation Policy

| | |
|---|--|
|  | <p style="text-align: center;">LAGRANGE POLICE DEPARTMENT</p> <p style="text-align: center;">OPERATIONS MANUAL</p> |
| <p>CHAPTER: 17-09</p> | <p>EFFECTIVE DATE: March 12, 2013</p> |
| <p>REVISED DATE:</p> | <p>NUMBER OF PAGES: 6</p> |
| <p>At Risk Adult Investigations</p> | <p>APPROVAL: Chief L. Dekmar</p> |
| <p>SPECIAL INSTRUCTIONS:</p> | <p>DISTRIBUTION: Divisions, Units, Sections</p> |

Index

- I. Purpose
- II. Policy
- III. Definitions
- IV. Procedures
 - A. Initial Investigation
 - B. Follow-up Investigation
 - C. Mandated Reporting

I. Purpose

The purpose of this policy is to establish guidelines and procedures for investigating crimes against at-risk adults encountered by Officers with the LaGrange Police Department.

II. Policy

It is the policy of the LaGrange Police Department complete thorough investigations in conjunction with the Georgia Department of Human Services Division of Aging Services of suspected abuse, neglect, or exploitation of at-risk adults. These investigations will be conducted for at-risk adults in both Non-instructional and institutional setting within the City of LaGrange.

III. Definitions

- A. At-Risk Adult - is defined as adults 65 years old and older and adults 18 years old and older with any disabilities which require adult care and control.
- B. Georgia Department of Human Services Division of Aging Services - is
- C. Exploitation - the illegal or improper use of a disabled adult or elder person or that person's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for another's profit or advantage
- D. Neglect - The absence or omission of essential services to the degree that it harms or threatens with the physical or emotional health of a disabled adult or elder person.
- E. Protective Services - services necessary to protect a disabled adult or elder person from abuse, neglect or exploitation. Such services shall include, but not be limited to, evaluation of the need for services and mobilization of

essential services on behalf of a disabled adult or elder person.

- F. Abuse - the willful infliction of physical pain, physical injury, mental anguish, unreasonable confinement, or the willful deprivation of essential services to a disabled adult or elder person
- G. Caretaker - a person who has the responsibility for the care of a disabled adult or elder person as a result of family relationship, contract, voluntary assumption of that responsibility, or by operation of law.
- H. Elder person - a person 65 years of age or older who is not a resident of a long-term care facility.
- I. Essential Services - social, medical, psychiatric or legal services necessary to safeguard the disabled adult's or elder person's rights and resources and to maintain the physical and mental well-being of such person. These services shall include, but not be limited to, the provisions of medical care for physical or mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection for health and safety hazards but shall include the taking into physical custody of a disabled adult or elder person without that person consent.

IV Procedures

- A. Initial Investigation** - Investigations involving at-risk adults are unlike any other type of investigation. Because these crimes are so distinct, it is critical to use the follow standards when initiating an at-risk adult investigation:
 - 1. The officer receiving the complaint must not prejudge whether a case is civil or criminal.
 - 2. The officer should not prejudge the capacity/competency of the victim.

3. The victim's lack of capacity or competency should not discourage any part of the investigation.
4. Each case must be investigated as a potential murder case based on the lack of capacity, competency, or willingness to assist with the investigation by the elderly victim.
5. Photos of the scene and victim must be taken immediately to document injuries and living conditions of the victim if applicable.
6. A review of prior calls for service for the victim or address must be completed.
7. A detective shall be contacted and will respond immediately if there is evidence of physical abuse or significant neglect of the at-risk adult.
8. An incident report will be completed by the initial responding officer. The report must document, at minimum, the source of the call, the name and age of the at-risk adult, the condition of the at risk adult, the condition of the dwelling in which the at-risk adult is living, the type of suspected maltreatment, any witnesses, any suspects, and the notification of DHS of the investigation (within 24 hours of the reported incident...need # for the report).
9. All interviews with the victim shall be audio recorded.

B. Follow-up Investigation - Initial investigations which indicate significant neglect or physical abuse require an immediate follow-up investigation by a detective. Cases that indicate other types of elder abuses will be assigned to a Special Victim's Detective for a follow-up investigation on the following business day. Follow-up investigations are critical to the successful prosecution of persons responsible for crimes against at-risk adults and shall include:

1. Reviewing and analyzing all reports prepared in the preliminary phase, Departmental records, and results from laboratory examinations.
2. Recording information obtained during follow-up investigation (supplemental reports).
3. Conducting additional interviews with victim(s), witness(es), and suspect(s).
4. Planning, organizing and conducting searches.
5. Collecting physical evidence.
6. Recovering stolen property if applicable.
7. Arranging for the analysis and evaluation of evidence.
8. Identifying and apprehending the perpetrator(s).
9. Checking suspect's criminal history.
10. Determining if other crimes may have been committed by the suspect(s).
11. Consulting with the District Attorney's office in preparing cases for court presentation and assisting in the prosecution thereof.

C. Mandated Reporting- any report generated by the LaGrange Police Department involving the abuse of a at-risk adult must be forwarded to the Department of Human Services Division of Aging Services within 24 hours of receiving such report (O.C.G.A. 30-5-4)

Louis M. Dekmar
Chief of Police

Date

**LaGrange Police Department
At-Risk Adult
Physical Abuse/Neglect Investigation Checklist**

Detective: _____ LPD Case Number: _____

| | |
|--|--|
| | Ensure that victim has received medical attention if needed. |
| | Complete DHR Elder Abuse Investigation Checklist. |
| | Identify and interview officer(s) who have conducted the preliminary investigation for pertinent information. |
| | Ensure supervisor page has been completed with information about the incident. |
| | Ensure that you have identified and interviewed the following people if applicable: |
| | Complainant |
| | Victim |
| | Caregiver and/or Guardian |
| | Potential Witnesses (family members, neighbors, etc.) |
| | Any in-home health care professional |
| | All other applicable personnel (fire, EMS, etc.) |
| | Identify victim's normal daily activities. |
| | Obtain a 24 hour timeline. |
| | Attempt to identify patterns of abuse over an extended period. |
| | If power of attorney exists, obtain a copy of this document. |
| | Obtain written consent from legal occupant/owner or obtain search warrant prior to searching any private property scene. |
| | Obtain list of medications, prescribing physicians, and distributing pharmacies. |
| | Obtain signed medical release form or search warrant for medical records for past five (5) years. |
| | Complete photos of victim(s) and document injuries utilizing body maps form. |
| | Complete scene photos. |
| | Collect evidence if applicable. |
| | Complete investigative canvass within 24 hours. |
| | Check criminal histories of all persons 17 years of age or older who live in the household. |
| | Notify Adult Protective Services while on scene by calling 1-866-552-4464. |
| | Obtain operator name and extension: |
| | |
| | |

Date: 031213

Appendix J

Laws Relating to At-Risk Adult & Elder Abuse

| Georgia Code | Defined Crime | Penalty | Other Information |
|-------------------------------|---|---------|-------------------|
| O.C.G.A. §16-5-1 | Murder | | |
| O.C.G.A. §16-5-2 | Voluntary Manslaughter | | |
| O.C.G.A. §16-5-3 | Involuntary Manslaughter | | |
| O.C.G.A. §16-5-21 | Aggravated Assault | | |
| O.C.G.A. §16-5-24 | Aggravated Battery | | |
| O.C.G.A. §16-5-40 | Kidnapping | | |
| O.C.G.A. §16-5-41 | False Imprisonment | | |
| O.C.G.A. §16-5-90 | Stalking | | |
| O.C.G.A. §16-5-100 | Cruelty to Person > 65 | | |
| O.C.G.A. §16-6-1 | Rape | | |
| O.C.G.A. §16-6-2 | Aggravated Sodomy | | |
| O.C.G.A. §16-6-5.1(d) | Sexual Assault (In Facility) | | |
| O.C.G.A. §16-6-22.2 | Aggravated Sexual Battery | | |
| O.C.G.A. §16-5-20(e) | Simple Assault (H&A) | | |
| O.C.G.A. §16-5-23(c) (g) | Simple Battery (H&A) | | |
| O.C.G.A. §16-5-23.1(j) | Battery (H&A) | | |
| O.C.G.A. §16-5-23.1(k) | Battery (Felony) If committed by employee of facility | | |
| O.C.G.A. §19-13-1 | Family Violence Act | | |
| O.C.G.A. §30-5-1 | Protection of Disabled Adults & Elder Persons Act | | |
| O.C.G.A. §30-5-8 | Penalties for abuse, neglect & exploitation (Not residents of long-term care facility) | | |
| O.C.G.A. §31-8-80 | Long-term Care Facility Resident Reporting Act | | |
| O.C.G.A. §31-5-8 | Misdemeanor to violate title 31 | | |
| O.C.G.A. §16-7-21 | Criminal Trespass | | |
| O.C.G.A. §16-7-23 | Criminal Damage to Property | | |

Laws Relating to At-Risk Adult & Elder Abuse

| Georgia Code | Defined Crime | Penalty | Other Information |
|--------------------------------|---|----------------|--------------------------|
| O.C.G.A. §16-8-1-16-8-12 | Theft Offenses | | |
| O.C.G.A. §16-8-12(a)(3) | Theft by Fiduciary (Felony – Any dollar amount) | | |
| O.C.G.A. §16-8-40 | Robbery | | |
| O.C.G.A. §16-9-20 | Deposit Account Fraud | | |
| O.C.G.A. §16-9-31 | Financial Transaction Card Fraud | | |
| O.C.G.A. §16-9-32 | Forgery of Financial Trans. Card | | |
| O.C.G.A. §16-9-33 | Financial Transaction Card Fraud | | |
| O.C.G.A. §16-9-37 | Unauthorized Use of Financial Transaction Card | | |
| O.C.G.A. §16-9-52 | Improper Solicitation of Money | | |
| O.C.G.A. §16-8-102 | Mortgage Fraud | | |
| O.C.G.A. §16-8-105 | Mortgage Fraud Penalties | | |
| O.C.G.A. §16-9-120 | Home Repair Fraud Act | | |
| O.C.G.A. §16-9-121 | Identify Fraud | | |
| O.C.G.A. §10-1-393 | Unfair/Deceptive Practices | | |
| O.C.G.A. §10-1-393.6 | Unlawful Telemarketing | | |
| O.C.G.A. §10-5B-6 | Abusive Telemarketing (If targeting seniors – can double penalties) | | |
| O.C.G.A. §17-3-2.2 | Statute of limitations is 15 years when victim > 65. | | |
| O.C.G.A. §37-1-100 | Misdemeanor to violate title 37 | | |
| O.C.G.A. §10-1-850 | Unfair or Deceptive Practices in Consumer Transactions | | |

Appendix K

LEGAL UPDATE



October 12, 2005
Georgia Bureau of Investigation

Dawn M. Diedrich
Deputy Director of Legal Services

Obtaining the Release of Medical Information after the Implementation of the Health Insurance Portability and Accountability Act (HIPAA)

Legal Services has been receiving calls regarding the effect of HIPAA on obtaining medical records in investigations. HIPAA does authorize the release without consent of medical information regarding individuals who are victims of a crime to law enforcement. Additionally medical information may be released without consent to coroners and medical examiners to identify a deceased person, determining a cause of death, or other duties as authorized by law. For your convenience when interacting with medical providers, a copy of these regulations and the website where they may be viewed is attached to this Legal Update and may be given to medical providers.

With regard to medical records of witnesses or suspects, HIPAA makes no provision for their release to law enforcement without consent or a warrant. For those records, you may want to obtain consent of the individual. A copy of a revised consent form is attached. We have learned that some providers are no longer accepting the old form.

Finally, if you are unable to obtain the records with consent or one of the statutory exceptions for victims, you should obtain a search warrant. In *King v. State*, 276 Ga. 126, 129 (2003), the Georgia Supreme Court held that a search warrant to obtain medical records of a suspect in a criminal investigation was the appropriate mechanism to obtain medical records as it provided adequate protection for a suspect's privacy rights. Similarly, the HIPAA regulations require that providers must disclose protected health information "in compliance with and as limited by the relevant requirements of a court-ordered warrant." 45 C.F.R. 164.512(f)(1)(ii)(A).

**GEORGIA BUREAU OF INVESTIGATION
AUTHORIZATION FOR RELEASE OF
PROTECTED HEALTH INFORMATION**

I hereby authorize Special Agent _____ of the Georgia Bureau of Investigation to receive information from the Medical Records of:

Patient: _____

SS# _____

Date of Birth: _____

I authorize the inspection of the Medical Records by the above named agency/person and/or to the furnishing of a photostat or other copies.

I place no limitations and understand that the information to be released may refer to history of illness, diagnostic and therapeutic information, including any treatment for alcohol or drug abuse/dependency; psychiatric or psychological conditions, mental illness or retardation, sexually transmitted disease, AIDS, or HIV. I understand that any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules.

I understand that I have a right to revoke this authorization at any time by presenting a written revocation to the Georgia Bureau of Investigation or my healthcare providers. I understand that the revocation will not apply to any information that has already been released in response to this authorization.

I hereby acknowledge that I have read (or had someone read to me) the above statements, and that I fully understand the above statements, and do expressly and voluntarily authorize the disclosure of this medical information to the Georgia Bureau of Investigation agent named above

Date: _____

Signature: _____
(Patient or Authorized Person)

Relationship to Patient: _____
(If other than patient)

This authorization expires _____ (insert applicable date or event or insert "no expiration designated") or in 6 months, whichever is shorter, and no further use/disclosures as described above may be made after the expiration.

104th Congress
PUBLIC LAW 104-191

AUG. 21, 1996

HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT OF 1996 (HIPAA)

<http://www.hhs.gov/ocr/regtext.html>

Code of Federal Regulations 45

Subpart C-Compliance and Enforcement

164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.

45 CFR 164.512 (f) HIPAA Exception for Law Enforcement

(f) Standard: Disclosures for law enforcement purposes.

(3) A covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime.

45 CFR 164.512 (g) HIPAA Exemption for Medical Examiners and Coroners

(g) Standard: Uses and disclosures about decedents.

(l) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

Appendix L

DATE , 2001

BANK NAME
Custodian of Records
ADDRESS
CITY, STATE ZIP

RE: Request for Records in Criminal Investigation
concerning your customer _____

Gentlemen:

Pursuant to the provisions of O.C.G.A. § 7-1-360, we are requesting that, on or before DATE_____, you provide the Georgia Bureau of Investigation with legible copies of certain records of accounts or other customer records as more particularly described in Exhibit A, attached hereto. These records are requested in conjunction with an ongoing criminal investigation.

Under provisions of O.C.G.A. § 7-1-360 (b), do not disclose or otherwise cause notification of customer whose records are being requested of the existence of this request or the fact that you have provided copies of customer records to a law enforcement agency. This prohibition applies to all officers, agents, or employees of your financial institution. Any such notification could seriously impair the investigation and obstruct law enforcement officers in the course of their duties

You may comply with this request by delivering the records requested to Special Agent __
_____at the above address or by telephone at 404-244-2566.

Sincerely,

Special Agent Principal

EXHIBIT A

Information that is in your possession and under your control and contained in files or records listed under a certain customer known as _____. These records pertain to checking, or savings accounts, loan accounts, safe deposit box records, and cashier check records, or other accounts that the listed customer (individually, jointly, as nominee, or as a trustee) have the right of withdrawal inclusive including but not limited to:

- 1) Account applications and signature cards.
- 2) Monthly account ledger sheets and
 - a. Deposit slips;
 - b. Deposited items;
 - c. Withdrawal documents;
 - d. Debit and credit memoranda;
 - e. Wire transfers;
- 3) Certificates of deposit or savings.
- 4) Loan applications, financial statements, ledger sheets, and documents of payments and receipts, pertaining to loans and mortgages.
- 5) Applications and entry records pertaining to safe deposit boxes.
- 6) Cashier checks, traveler's checks, bank money orders, or other monetary instruments purchased.
- 7) Records pertaining to purchases and sales of securities.
- 8) Correspondence and legal files.
- 9) Credit files and letters of credit.
- 10) Currency transaction reports relating to the aforementioned customers.

Appendix M

At Risk Abuse Case Studies

Here are some specific case facts that demonstrate these types of abuse situations:

Case Study 1 – Exploitation

Lillian Morgan married Ed Morgan later in life. They each had children already. Ed Morgan had worked all his life, while Lillian Morgan never worked outside the home. In 2008, Ed and Lillian Morgan were both diagnosed with dementia. On January 12, 2009, Ed Morgan was determined to be incompetent. Shortly thereafter, Ed's daughter, Mary Hart, filed conservatorship papers in probate court.

Right after the papers were filed, but before the court ruled on the issue of conservatorship, Lillian Morgan became concerned about the money in the joint checking account she held with her husband. Lillian went to the bank with her daughter, Belinda Coggins, and took out \$78,000 – leaving only \$10,000 in the account. She gave the money to Belinda Coggins (who is not Ed Morgan's daughter) for safekeeping. Belinda Coggins and her husband, Harry Coggins, opened a joint checking account with the money. In two months they spent almost all of the money on their own debts; they purchased a car and a shed for their backyard and withdrew the rest of the money in cashier's checks.

During this time period, on February 13, 2009, Edwin Morgan signed the title of his car, a Toyota Cressida, to Belinda Coggins. This was after he had been found to be incompetent to handle his affairs.

On March 31, 2009, Lillian Morgan asked Belinda to return the money. Belinda hit herself in the head with a frying pan, causing injury to her face, drove to a gas station in Cobb County and called the police, claiming she had been robbed and beaten and \$2000 was taken. The next day, Harry Coggins withdrew \$35,000.00 from their joint bank account. One week later Belinda Coggins went back to the police station and reported that in fact, \$78,000 had been taken in the robbery.

On April 15, 2009, Belinda Coggins made a statement to DeKalb Police regarding the robbery. The next day Belinda admitted to police that she had made up the story, so that she would not have to tell her mother that she spent the money. Police obtained an order to freeze the Coggins's bank account, but only \$6,000.00 was left.

Lillian Morgan now lives with the Cogginses at their home. Ed Morgan is no longer competent and has moved into a care home.

At Risk Abuse Case Studies (continued)

The money in the joint account was comprised of Ed Morgan's pension, dividend payments on investments which predated his marriage to Lillian Morgan, and rental income on his parents' former home, which he owned prior to the marriage. Ed Morgan has no savings left. Lillian Morgan never contributed any funds of consequence to the joint account.

The charges in this case consisted of theft by taking, false statements, and elder exploitation. The longest possible sentence was 25 years. Both defendants were convicted at trial in 2010. They were sentenced to 10 years with 5 to serve, restitution to Edwin Morgan of \$72,000.00, and to have no contact with Edwin Morgan, his family or any witnesses.

Case Study 2 – Exploitation

From March 3, 2009, through August 14, 2009, Santee Roberts, her boyfriend Donald Crane and his mother, Charlene Merkerson, participated in a conspiracy to obtain and use credit card account numbers from elderly victims.

During that time they contacted hundreds of victims by phone, claiming to be Ga. Power representatives. They told the victims that their power was about to be cut off, and they had to give their credit card numbers, or even their credit cards, to prevent their service from being shut off. The defendants then used the information or the cards to purchase electronics and other items, to take out cash advances from ATMs or send money transfers through Western Union.

The defendants contacted 81 people in DeKalb County, and 35 of those people gave their account information or credit cards to the defendants. All but three of them were over the age of 65.

The defendants were staying in metro area motels under assumed names. They moved every two or three days. Finally, in April, 2009, police found Roberts in a Fulton County motel room. She had credit cards and driver's licenses belonging to several people, as well as a piece of paper with Ona Simmons's social security number and date of birth written on it. Ms. Simmons, a 70 year old DeKalb County resident, confirmed that she had been contacted by Ga. Power and told the same story.

Roberts claimed illness and used the bathroom at the precinct. She stuffed 37 credit cards into a seat cover dispenser in the bathroom. Then she was sent to Grady Hospital. Due

At Risk Abuse Case Studies (continued)

to her “illness” she was given a copy of her charges and told her court date, but she did not appear. The police had to start looking for her again. In June, the defendants obtained a Metro PCS cell phone under the name Georgia Powers, and continued to call elderly people in the metro area. Those victims who had caller id saw “Georgia Power” and believed the defendants. The defendants used this phone for two months, but changed the phone number several times.

On August 14, 2009, a woman in East Point named Frankie Swain, age 65, received a phone call claiming that her gas service was about to be cut off. Swain gave the caller her credit card number. Then a man called Swain and said her card had been compromised and she had to put her credit card in her mailbox. Swain called the police. Swain saw a car pull up and one of the occupants checked her mailbox. The police came and followed the car. They found it parked nearby. Roberts and Merkerson were walking away from the car. The cell phone in the car was the one that had been used to call all the victims from June – August and was registered under Georgia Powers.

At the police station, Merkerson claimed she was ill. She was sent to Grady Hospital and escaped. She has not been re-arrested. Roberts lied about her name but after she was fingerprinted she placed all the blame on Merkerson and her son Donald Crane. Roberts said that Crane was driving the car that night but ran in a different direction and was not caught at the scene.

Video footage shows all three defendants shopping for electronics and other items at Wal-Mart using Betty Worley’s credit card. There is also footage of Roberts making a withdrawal from an ATM in DeKalb using Betty Worley’s credit card. Worley is 79 years old.

Edweina Kilpatrick watched a man open her mailbox and take out her credit card. It was midnight. A few minutes later, one mile from Kilpatrick’s house, Roberts and Crane bought food at a convenience store using her credit card. In the video, Crane is standing next to Roberts as she tells the cashier that her name, Edweina, is unusual. The date and time are stamped on the video.

Roberts committed the same scam in Michigan in 2003, claiming to work for Consumer’s Energy Company and telling a large number of elderly victims their service was about to be shut off. She was sentenced in federal court.

At Risk Abuse Case Studies (continued)

The charges in this case were RICO, Identity fraud, electronic transaction card fraud and several counts of elder exploitation. The longest possible sentence was 48 years. Roberts was convicted at trial and was sentenced to 43 years to serve 20 (without parole). Crane pled guilty on July 7, 2011, and was sentenced to 5 years to serve 4, and Merkerson is still in bench warrant status.

Case Study 3 – Abuse and Essential Services

In January, 2010, Lanodo Prather, a disabled adult, was arrested for burglary. He had been caught trying to enter a restaurant to get food. He asked police to not send him back to where he was living, with Bobbie Ward. He said she had beaten him and burned him with curling irons. Det. Maldonado looked at Prather's body and found scars, burns and recent, scabbed injuries over his entire body.

On January 16, 2010, police and APS went to Ward's home, located at 2639 Venus Way in Decatur. A mentally challenged man and three children were there. They would not allow the police to enter, so they obtained a search warrant. During the search, another disabled person, Edsel Head, was located in the home. Mr. Head was living in squalid conditions in a lower portion of the home, and he was unable to climb the stairs to exit the home without significant assistance. The room smelled strongly of urine and the ceiling was partially caved in. There were no working lights and the room was overrun with roaches.

Mr. Head was removed from the home, but he insisted that the police recover his checkbook. He had won a small settlement from the car accident that disabled him and he thought he had money in the account. It was later discovered that Ward had gained access to Mr. Head's bank account and she had spent his money without his knowledge or permission. She had also signed his social security checks without his permission and spent that money as well.

Ms. Ward was indicted in 2010, but subsequently it was determined that Ms. Ward had obtained utility services by using Mr. Prather's and Mr. Head's information. The case was re-indicted and the State started interviewing other disabled adults who had lived with Ward. On March 6, 2012, the case was re-indicted again, to include counts of identity fraud against another disabled victim, a disabled victim who died in 2006, and an

At Risk Abuse Case Studies (continued)

elderly victim. All of their identities were used by Ward to obtain utilities, (in the case of the deceased person, it was after he died) and those bills were never paid.

Some of the disabled and elderly victims who lived with Ward have described unsanitary and unsafe conditions, much like Mr. Head's room at the house on Venus Way. James Duncan, who is 80 years old, said that Ward locked him in the house, which was so filthy that he had to put plastic bags on his feet to walk down the hall, and that she practically starved him and Mr. Head, who lived in that house with Mr. Duncan.

The charges consisted of Aggravated Assault; Abuse of a Disabled Adult; Neglect of a Disabled Adult; Exploitation of a Disabled Adult; Forgery in the First Degree; Identity Fraud; Exploitation of a Disabled Adult; Exploitation of an Elder Person; and Exploitation of a Disabled Adult. The possible sentence is 230 years. Bobbie Ward was found guilty on 21 out of 25 counts, including all the elder and disabled neglect and exploitation counts in January 2013 and will be sentenced at a later date.

Case Study 4 – Abuse, Neglect and Essential Services

On March 6, 2010, police stopped Johnny Hill, who was walking down a residential street wearing shorts and a blanket around his neck. Mr. Hill told police he had been held against his will in a basement for several months and he had just broken out. He directed police to the house. Benjamin Wheeler answered the door. When he was asked who lived in the house, Mr. Wheeler said that the other guy who lived there had busted out that morning. He then identified Mr. Hill as the other guy who lived there. He took police into the basement, where there were two cots in a locked room that could only be opened from the outside. The door to the basement stairs also had a lock that could not be opened from the basement side of the door.

Inside the room were two cots, a lamp, a TV, and a paint bucket filled with urine. Mr. Hill told police that he was homeless, and Chandra Faust, the woman who rents the home, had invited him to live there. When he tried to leave, she took his wallet and she locked him in the room in the basement. There are no toilets or bathing facilities in the basement. Both Mr. Hill and Mr. Wheeler are disabled and living on social security payments. Mr. Hill is very frail and can barely walk without assistance. Mr. Wheeler is a schizophrenic who has never worked.

At Risk Abuse Case Studies (continued)

Mr. Wheeler has willingly lived with Ms. Faust for many years. He confirmed that the bucket was the only toilet they had in the room, and he said it was his job to empty the bucket. He said that Mr. Hill was there for several months and that he repeatedly told Ms. Faust that he wanted to leave.

Ms. Faust drove up to the house while the police were there. She said she had let Mr. Hill stay in the house for one night and she denied locking him in against his will. She said she knew nothing about Mr. Hill's finances. However, his wallet was in her car and Ms. Faust had added her name to Mr. Hill's bank account in October 2009. Mr. Hill says that he had no access to his account while he was locked in the basement, and that she took all the money out of the account without his permission. He also told police that he could prove he was in the basement for more than one night, because he put his hair under the lamp in the room. The police found a large clump of hair under the lamp.

In 2002, a man climbed out a window at Ms. Faust's rented home and called the police. He said that he and others were living in deplorable conditions, so police went to the home. They found several old and disabled adults living in the house. Ms. Faust claimed they were her relatives, but they were not related to her. Police found a disabled man living in the basement of the home, with the door locked from the outside, sleeping on a cot with a bucket serving as the only toilet in the room. The cot, the television and the bucket in that basement appear to be the same as the ones in the current case.

Ms. Faust pled guilty on the morning that the trial was set to begin. She was sentenced to 20 to serve 10. Special conditions -- the defendant may not house any persons not related to her, she may not become a representative payee for any other person, nor may she have the power of attorney for any other person. The defendant may not work for elder or disabled adults in any capacity and may not accept payments or compensation from any elder or disabled adults for any reason.

Appendix N



GEORGIA BUREAU OF INVESTIGATION

INTELLIGENCE REPORT

SENSITIVE
CLASSIFIED

GSI/GBI ONLY
LAW ENF ONLY

Agent: _____
Work Unit: _____
Date: _____

Subject

Name: _____
Address: _____
City/St: _____
Phone: _____
DOB: _____
SSN: _____ Race/Sex: _____
OLN _____

Organization/Business

Name: _____
Address: _____
City/St: _____
Phone: _____

Source ID

Rating _____

Unknown Caller: _____
CI/PS _____
Name: _____
Address: _____
City/St: _____
Phone: _____

Source:
A. Highly Reliable
B. Usually Reliable
C. Fairly Reliable
D. Unreliable
E. Cannot be judged

Information:
1. Confirmed True
2. Probably True
3. Possibly True
4. Doubtfully True
5. Cannot be judged

Criminal Activity

Summary:

Agent _____ Work Unit Supervisor _____ Inspector _____
Agent Approval Supervisor Approval Inspector Approval

Reports Furnished To: _____

Appendix O

Case #

SEARCH WARRANT

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

Docket No:

_____ TO: ALL PEACE OFFICERS OF THE STATE OF GEORGIA

Affidavit having been made before me by Detective _____, an officer charged with the duty of enforcing the Criminal Laws, that he has reason to believe that in LaGrange, Troup County, Georgia, on the following described person, premises, or property:

1400 Hogansville Road, LaGrange, Troup County, Georgia (Twin Fountains Home);

There is now located certain instruments, articles, person(s), or things, namely:

Medical records (dating from November 1, 2007 through January 9, 2008) of White Female, DOB: a resident of Twin Fountains Home

Which is evidence in an investigation of:

Battery (O.C.G.A. 16-5-23.1)

Based upon the affidavit given under oath or affirmation and all other evidence given to me under oath or affirmation, I am satisfied that there is probable cause to believe that a crime is being committed or has been committed and that the items described above are presently located on the person, premises, or property described above.

You are hereby commanded to enter, search and seize within ten (10) days of this date, the person, premises, or property described above. A copy of this Warrant is to be left with the person searched, or if no person is available, on the premises or vehicle searched, and a written return, including an inventory of any things seized, shall be made before me or a court of competent jurisdiction without unnecessary delay after the execution of this Search Warrant.

SO ORDERED this _____ day of _____, 20__ at _____ M.

Magistrate/Judge _____ County, Georgia

Judge of the _____ Court

NO-KNOCK PROVISION *(Not valid unless signed)*

IT APPEARING from the aforementioned Affidavit that there are reasonable grounds to believe that the giving of verbal notice would greatly increase the officer's peril and (or) lead to the immediate destruction of the instruments, articles, or things ordered to be seized.

IT IS, THEREFORE, ORDERED that entry be made without knocking and the giving of verbal notice of the officer(s) authority and purpose.

SO ORDERED this _____ day of _____, 20__, at _____ M.

Magistrate/Judge Troup County, Georgia
Court

Judge of the

RETURN OF SERVICE

() This Search Warrant was not executed and is returned to the judicial officer who issued it.

() I executed this Search Warrant on the _____ day of _____, 20__, at M.

and searched the person, premises, or property described in the warrant. A copy of this warrant:

() Was left with _____.

() Was left in the following conspicuous place:
because no one was available to be given the warrant.

Attached hereto is an inventory consisting of _____ pages, of the instruments, articles or things that were seized pursuant to this Search Warrant. This inventory was made in the presence of

_____ and I swear (affirm) that this inventory is a true and detailed account of all instruments, articles, or things seized pursuant to this Search Warrant.

Affiant

Magistrate/Judge _____ County, Georgia
Judge of the _____ Court

AFFIDAVIT AND APPLICATION FOR A SEARCH WARRANT

The Affiant is Robert Kirby, a Detective with the LaGrange Police Department and a sworn peace officer in the State of Georgia. This is an Affidavit for a Search Warrant, authorizing the seizure of **medical records (dating from November 1, 2007 through January 9, 2008)** of _____, **White Female, DOB: _____, a resident of Twin Fountains Home**, which is evidence of the criminal offense of **Battery (O.C.G.A. 16-5-23.1)** from the premises described as follows:

1400 Hogansville Road, LaGrange, Troup County, Georgia (Twin Fountains Home);

The Affiant believes that the above, described item is evidence in a criminal investigation of **Battery (O.C.G.A. 16-5-23.1)** based upon the following facts and circumstances:

1. On December 31, 2007, at approximately 2020 hours, Officer Nick Patten spoke with _____ by telephone in reference to a complaint of elder abuse. At this time, _____ advised that she believes _____, her mother, was being neglected or abused at 1400 Hogansville Road, LaGrange, Troup County, Georgia (Twin Fountains Home). _____ then asked Officer Patten to meet _____, her sister, at Twin Fountains Home. Officer Patten then responded to Twin Fountains Home, where he met with _____. At this time, _____ stated that she had observed large bruises on the arms and chest of _____. _____ stated that _____ is unable to speak. Officer Patten then accompanied _____ into Room 1 on the North Wing of the facility and observed that _____ was bedridden. _____ pulled back _____ blouse, revealing her right arm and upper chest. Officer Patten observed deep bruising, dark purple in color and swollen, to _____ right bicep and a smaller bruise on _____ upper chest.

2. On January 2, 2008, at approximately 1530 hours, the affiant met with _____ at Twin Fountains Home in reference to this case. At this time, _____ stated that _____, an employee of Twin Fountains Home, had reported that she had observed the bruises on _____ arm on at 1415 hours on December 30, 2007. _____ stated that _____ had been suspended pending the results of an internal investigation, which was already in progress. _____ stated that she had taken statements from _____ and from other unidentified employees who have access to _____. _____ then accompanied the affiant to _____ room. At this time, the affiant observed a large area of dark bruising on _____ right arm. The affiant also observed a small bruise on _____ chest. The affiant then photographed these injuries and confirmed that _____ is unable to speak.

3. On January 3, 2008, at approximately 1408 hours, the affiant interviewed _____ at the LaGrange Police Department in reference to this case. During the course of this interview, _____ stated that she working at Twin Fountains Home on December 30, 2007. _____ stated that she had noticed that _____ was not urinating as frequently as usual on that date. _____ said that at approximately 1030 hours, she observed that _____ had wet the bed. _____ stated that she then changed _____ pad at this time, but that _____ clothes were not wet,

and that she did not remove any of _____ clothing. ___ said that she was on break from approximately 1105 hours to approximately 1140 hours. ___ stated that she distributed and picked up lunch trays from approximately 1200 hours to approximately 1300 hours. ___ stated that she did her last round just after 1300 hours and that she arrived at _____

room at approximately 1400. _____ stated that she then disrobed ___ in order to give her a shower. ___ stated that when she removed _____ nightgown, she observed a deep bruise on _____ right arm. _____ stated that she immediately reported the bruise to a supervisor, as is required by policy. _____ stated that the only physical contact she had with _____ on that date was to turn her over to change her pad and to prepare her for her shower. _____ stated that numerous employees would have had access to _____ before she observed the injury. _____ insisted that she did not intentionally cause any injury to _____, and that she does not believe she caused the injury on accident. _____ stated that employees routinely move patients by rolling them, moving them with bed sheets and pads, and lifting them from underneath their arms. _____ then agreed to submit to a polygraph examination regarding whether she struck _____, intentionally causing _____ injuries. This polygraph was scheduled for January 4, 2008, at 0800 hours.

4. On January 4, 2008, _____ did not come to the LaGrange Police Department for her scheduled polygraph.

5. On January 8, 2008, at approximately 0815 hours, the affiant met with _____ and _____ at Twin Fountains Home in reference to this case. At this time, _____ stated that during her investigation, she has taken statements from numerous employees. _____ stated that employees _____ and _____ both saw ___ disrobed at approximately 0600 hours on December 30, 2007. According to _____, _____ removed her feeding tube, and _____ and _____ had to change her clothes and bed sheets as a result. _____ stated that both _____ and _____ said that _____ they did not observe any injuries on _____ body at that time. _____ stated that after _____'s injuries were reported, she was examined at the West Georgia Medical Center Emergency Room. _____ stated that she would provide the affiant with copies of statements taken from all employees and a copy of _____'s medical record pertaining to this incident after the affiant submit a medical records release form signed by one of _____'s daughters.

6. On January 8, 2008, at approximately 1500 hours, the affiant spoke with _____ daughter, by telephone in reference to this case. At this time, _____ became irate and refused to sign a medical records release form regarding her mother's medical records.

7. On January 8, 2007, at approximately 1545 hours, the affiant met with _____, _____ other daughter, at 219 Sivell Road, LaGrange, Troup County, Georgia in reference to this case. At this time the affiant asked _____ to sign a medical records release form regarding her mother's medical records. However, _____ then stated that _____, her sister, had just called her and advised her not to sign the medical records release form.

Based upon the above stated facts and circumstances, the affiant believes that on or about December 30, 2007, _____ sustained injuries to her right bicep and chest at Twin Fountains Home. The cause of these injuries is undetermined at this time, and members of _____ immediate family have refused to cooperate with police during this investigation. The Affiant believes that the **medical records (dating from**

November 1, 2007 through January 9, 2008) of _____, White Female, DOB: _____, a resident of Twin Fountains Home, are likely located at 1400 Hogansville Road, LaGrange, Troup County, Georgia (Twin Fountains Home). Further, the affiant submits that there is sufficient probable cause for the issuance of this search warrant, authorizing the collection of said medical records. Such collecting will significantly further this criminal investigation of **Battery (O.C.G.A. 16-5-23.1).**

Affiant

Sworn to and subscribed to before me this _____ day of _____, 20__
at _____ M.

Magistrate/Judge Troup County, Georgia

Judge of the _____ Court

Appendix P

House Bill 78 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 51st, Jones of the 47th, Lindsey of the 54th, Abrams of the 89th, Cooper of the 43rd, and others

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 cruey 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) 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 ~~(e)(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
 128 to investigative and subpoena powers of district attorney and the Attorney General, as
 129 follows:

130 "(a) In any investigation of a violation of this article or any investigation of a violation of
 131 Code Section 16-12-100, 16-12-100.1, 16-12-100.2, 16-5-90, Article 8 of Chapter 5 of this
 132 title, or Article 8 of ~~Chapter 9 of Title 16~~ this chapter involving the use of a computer in
 133 furtherance of the act, the Attorney General or any district attorney shall have the power
 134 to administer oaths; to call any party to testify under oath at such investigation; to require
 135 the attendance of witnesses and the production of books, records, and papers; and to take
 136 the depositions of witnesses. The Attorney General or any such district attorney is
 137 authorized to issue a subpoena for any witness or a subpoena to compel the production of
 138 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
 141 to disclosures by service providers pursuant to investigations, as follows:

142 "(a) Any law enforcement unit, the Attorney General, or any district attorney who is
 143 conducting an investigation of a violation of this article or an investigation of a violation
 144 of Code Section 16-12-100, 16-12-100.1, 16-12-100.2, or 16-5-90, Article 8 of Chapter 5
 145 of this title, or Article 8 of this chapter involving the use of a computer, cellular telephone,
 146 or any other electronic device used in furtherance of the act may require the disclosure by
 147 a provider of electronic communication service or remote computing service of the
 148 contents of a wire or electronic communication that is in electronic storage in an electronic
 149 communications system for 180 days or less pursuant to a search warrant issued under the
 150 provisions of Article 2 of Chapter 5 of Title 17 by a court with jurisdiction over the offense
 151 under investigation. Such court may require the disclosure by a provider of electronic
 152 communication service or remote computing service of the contents of a wire or electronic
 153 communication that has been in electronic storage in an electronic communications system
 154 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
 157 revising subsection (b) of Code Section 24-6-612, relating to writing used to refresh memory,
 158 as follows:

159 "(b) If a witness uses a writing to refresh his or her memory before testifying at trial and
 160 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 ~~(e)~~(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 elder 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 ~~(e)~~ (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 ~~(e)~~(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 MANDATORY

523 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 CROSS-

530 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**
 609 **3-8.**

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

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

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

616 ~~(M) A violation of Code Section 30-5-8, relating to abuse, neglect, or~~
~~exploitation of 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.