

House Bill 363 (AS PASSED HOUSE AND SENATE)

By: Representatives LaHood of the 175<sup>th</sup>, Cooper of the 43<sup>rd</sup>, Rich of the 97<sup>th</sup>, Scoggins of the 14<sup>th</sup>, and Leverett of the 33<sup>rd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and  
2 offenses, so as to revise definitions relative to the protection of elder persons; to remove  
3 enhanced penalties for certain offenses against persons 65 years of age or older or  
4 employees, agents, or volunteers at long-term care facilities; to provide for related matters;  
5 to repeal conflicting laws; and for other purposes. And to amend Title 16 relating to crimes  
6 and offenses so as to revise the offense of improper sexual contact by employee, agent, or  
7 foster parent; to revise and provide for definitions; to prohibit improper sexual contact within  
8 programs and facilities used by individuals as a condition of their probation or parole; to  
9 provide for a response to *Bully v. State*, 2020 Ga. App. LEXIS 628 (2020).

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
13 amended by revising subsection (e) of Code Section 16-5-20, relating to simple assault, as  
14 follows:

15 ~~"(e) Any person who commits the offense of simple assault against a person who is 65~~  
16 ~~years of age or older shall, upon conviction thereof, be punished for a misdemeanor of a~~  
17 ~~high and aggravated nature. Reserved."~~

18 **SECTION 2.**

19 Said title is further amended in Code Section 16-5-23, relating to simple battery, by revising  
20 subsection (g) as follows:

21 ~~"(g) A person who is an employee, agent, or volunteer at any facility licensed or required~~  
22 ~~to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code~~  
23 ~~Section 31-7-12.2, relating to assisted living communities, or Code Section 31-7-12,~~  
24 ~~relating to personal care homes, or who is required to be licensed pursuant to Code Section~~  
25 ~~31-7-151 or 31-7-173, relating to home health care and hospices, who commits the offense~~  
26 ~~of simple battery against a person who is admitted to or receiving services from such~~  
27 ~~facility, person, or entity shall be punished for a misdemeanor of a high and aggravated~~  
28 ~~nature. Reserved."~~

29 **SECTION 3.**

30 Said title is further amended in Code Section 16-5-23.1, relating to battery, by revising  
31 subsection (j) as follows:

32 ~~"(j) A person who is an employee, agent, or volunteer at any facility licensed or required~~  
33 ~~to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code~~  
34 ~~Section 31-7-12.2, relating to assisted living communities, or Code Section 31-7-12,~~  
35 ~~relating to personal care homes, or who is required to be licensed pursuant to Code Section~~  
36 ~~31-7-151 or 31-7-173, relating to home health care and hospices, who commits the offense~~  
37 ~~of battery against a person who is admitted to or receiving services from such facility,~~  
38 ~~person, or entity shall, upon conviction thereof, be punished by imprisonment for not less~~

39 ~~than one nor more than five years, or a fine of not more than \$2,000.00, or both. Reserved."~~

40 **SECTION 4.**

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

43 "(0.1) 'Abuse of access' means the illegal taking of resources belonging to a disabled  
44 adult or elder person when access to the resources was obtained due to the disabled  
45 adult's or elder person's mental or physical incapacity."

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

52 **SECTION 5.**

53 Said title is further amended in Code Section 16-8-12, relating to penalties for theft in  
54 violation of Code Sections 16-8-2 through 16-8-9, by revising subsection (b) as follows:

55 ~~"(b) Except as otherwise provided in paragraph (5) of subsection (a) of this Code section,~~  
56 ~~any person who commits the offense of theft by deception when the property which was~~  
57 ~~the subject of the theft exceeded \$500.00 in value and the offense was committed against~~  
58 ~~a person who is 65 years of age or older shall, upon conviction thereof, be punished by~~  
59 ~~imprisonment for not less than five nor more than ten years. Reserved."~~

60 **SECTION 6.**

61 To Code Section 16-6-5.1 by revising paragraph (4) of, and adding a new paragraph to,  
62 subsection (a) as follows:

63 “(4) ‘Employee’ means an individual who works for salary, wages, or other  
64 remuneration for an employer or sole proprietor.”

65 (11) “Sole proprietor” means an individual who is an owner or operator of a program or  
66 facility rendering services or housing to another as a condition of such other person’s  
67 probation or parole.

68 By revising subsection 16-6-5.1 (b)(2) as follows:

69 (2) Under probation, parole, a program or within a facility as a condition of probation or  
70 parole, accountability court, or pretrial diversion supervision of the office or court of  
71 which he or she is an employee or agent;

72 (1) Enrolled as a student at a school of which he or she is an employee or agent;

73 (2) Under probation, parole, a program or within a facility as a condition of probation or  
74 parole, accountability court, or pretrial diversion supervision of the office or court of  
75 which he or she is an employee or agent;

76 By revising Code Section 16-6-5.1 (c)(2) as follows:

77 c) A person commits the offense of improper sexual contact by employee or agent in the  
78 second degree when such employee or agent knowingly engages in sexual contact,  
79 excluding sexually explicit conduct, with another person whom such employee or agent  
80 knows or reasonably should have known is contemporaneously:

81 (2) Under probation, parole, a program or within a facility as a condition of probation or  
82 parole, accountability court, or pretrial diversion supervision of the office or court of  
83 which he or she is an employee or agent;

84 **SECTION 6.**

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