



*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **REPORTING ABUSE OF DISABLED ADULTS AND ELDER PERSONS IN GEORGIA**

The broad purpose of the Georgia's Disabled Adults and Elder Persons Protection Act (O.C.G.A. §§ 30-5-1, *et. seq.*) is to provide protective services for abused, neglected, or exploited disabled adults and elder persons. This article explains the reporting requirements of the Act, including who is a Mandatory Reporter, and the procedures for reporting suspected abuse, neglect, or exploitation.

### **What Must Be Reported?**

The Act requires certain individuals to report suspected abuse, neglect, or exploitation of disabled adults or elder persons.<sup>1</sup> Each of the preceding terms has a specific meaning.

- "Abuse" is the willful infliction of physical pain, physical injury, sexual abuse, mental anguish, unreasonable confinement, or the willful deprivation of essential services to a disabled adult or elder person.
- "Neglect" is 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.
- "Exploitation" is 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 one's own or another's profit or advantage.
- A "disabled adult" is any person 18 years of age or older who is not a resident of a long-term care facility, and is mentally or physically incapacitated, has Alzheimer's disease, or has dementia.

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<sup>1</sup> The Act does not concern the reporting of abuse, neglect, or exploitation of disabled adults or elder persons who are residents of long-term care facilities, as Georgia law has a separate provision regulating long-term care facilities. This article does not cover reporting of suspected abuse of residents of such facilities. See O.C.G.A. § 31-8-80.

Dated: 8/7/2015

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- An “elder person” is a person 65 years of age or older who is not a resident of a long-term care facility.

Abuse and neglect are broader than physical pain or injury, and mental suffering is also included. Another common and serious form of abuse or neglect is the denial (whether intentional or by neglect) of “essential services.” These services are broad, and include the social, medical, physical, or legal services necessary to safeguard a disabled adult’s or elder person’s rights and resources and to maintain their physical and mental well-being. This may include, but is not limited to, the following:

- Provision of medical care for physical and mental health needs
- Assistance in personal hygiene
- Food
- Clothing
- Adequately heated and ventilated shelter
- Protection from health and safety hazards

### **Who Can vs. Who Must Report Abuse?**

Any person who suspects abuse, neglect, or exploitation of an elder or disabled adult may and should report it. Certain individuals, often called “Mandatory Reporters”, are required by law to report suspected abuse. Failure of a Mandatory Reporter to report suspected abuse, neglect, or exploitation of a disabled adult or elder person is a misdemeanor.

The following persons are Mandatory Reporters:

- Any person listed as a Mandatory Reporter of child abuse under O.C.G.A. § 19-7-5; this list includes but is not limited to:<sup>2</sup>
  - Licensed physicians, physician assistants, interns, and residents;
  - Hospital or medical personnel or volunteers;
  - Dentists;
  - Licensed psychologists and interns;
  - Podiatrists;
  - Registered nurses, LPNs, and nurses’ aides;
  - Professional counselors, social workers, or marriage and family therapists; and
  - Law enforcement personnel;

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<sup>2</sup> For a complete list of Mandatory Reporters of child abuse, see O.C.G.A. § 19-7-5. See also Pro Bono Partnership of Atlanta’s [Article on Child Abuse Reporting in Georgia](#).

- Physical therapists;
- Occupational therapists;
- Day-care personnel;
- Coroners;
- Medical examiners;
- Emergency medical personnel;
- Any person certified as an emergency medical technician, paramedic, or first responder;
- Employees of a public or private agency engaged in professional health related services to elder persons or disabled adults;
- Clergy members; and
- Any employee of an investment company or financial institution (including banks) that has reasonable cause to believe a disabled adult or elder person is the victim of exploitation.

Those not listed (“Non-Mandatory Reporters”) are not required by law to report suspected abuse but are encouraged to do so in the same manner as provided for Mandatory Reporters.

## **Reporting Procedures**

### **WHO Should Report**

- Any person who suspects an elder or disabled adult is the victim of abuse, neglect, or exploitation may and should report.
- A Non-Mandatory Reporter is not required to follow any particular procedure; however, following the procedure for Mandatory Reporters is encouraged in order to lead to the appropriate response.
- A Mandatory Reporter must use the following procedure.

### **HOW to Report**

Dated: 8/7/2015

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- If the Mandatory Reporter is a member of the staff of a hospital, social agency, financial institution, or similar facility, he or she must notify the person in charge of the facility. The person in charge, or his or her designee, must then report in accordance with these procedures.
- Reports may be made by oral or written communication, and must include the following:
  - The name and address of the disabled adult or elder person;
  - The name and address of the disabled adult's or elder person's caretaker;
  - The age of the disabled adult or elder person;
  - The nature and extent of the disabled adult's or elder person's injury or condition resulting from abuse, neglect, or exploitation; and
  - Any other pertinent information.

### **WHEN and WHERE to Report**

- If an elder person, disabled adult, or anyone else needs immediate help, call 911. Otherwise, reports should be made as soon as possible.
- A report of suspected abuse, neglect, or exploitation should be made to the Georgia Department of Human Services, Division of Aging Services **AND** to a local law enforcement agency or prosecuting attorney. See [Find Your Prosecuting Attorney](#)
- Reports to the Division of Aging Services may be made:
  - Online at [the Division of Aging Services' website](#);
  - By fax at (770) 408-3001; or
  - Over the phone toll-free at 1-866-55AGING (1-866-552-4464) – Press “3.”
- Phone messages, fax, and web reports will be followed up on the next business day. If you do not receive a follow up call within 48 hours, you may call during regular business hours to follow up on your report.

### **WHAT Happens Next**

- The agency will immediately make a determination based on available information as to whether the incident alleges actions that constitute a crime and include its findings in a report.
- If at any point a crime is suspected, the agency will immediately forward its report and any evidence to an appropriate law enforcement agency or prosecuting attorney.

Dated: 8/7/2015

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## **Protection for Reporters**

### **Immunity from Civil and Criminal Liability**

- Those who report in accordance with the above procedure, including both Mandatory and Non-Mandatory Reporters, are immune from any civil liability or criminal prosecution on account of their making a report, testifying in connection to the report, participating in a required investigation, or providing protective services to an elder person or disabled adult.
- However, this immunity does not apply where a person acted in bad faith, with a malicious purpose, or if the person was a party to the wrongdoing.

### **What Is Covered under Immunity?**

- Immunity means that a civil lawsuit or criminal prosecution may not be brought against a reporter for any harm resulting from reporting suspected abuse, neglect, or exploitation.
- Immunity is not limited to the initial report or reporter. It extends to every person who, in good faith, participates over time in reporting, investigating, and prosecuting the suspected abuse, neglect, or exploitation.

### **What is “Good Faith”?**

- “Good faith” is the opposite of “bad faith.” If bad faith cannot be shown, a reporter will retain immunity from civil liability and criminal prosecution.
- Bad faith generally involves actions or behavior intended to mislead or deceive another person, or the neglect or refusal to carry out a duty due to a questionable motive.
- An honest mistake, regular negligence, or bad judgment will not constitute bad faith unless it is accompanied by a dishonest or improper purpose.

### **Reporting Otherwise Confidential Information**

- Mandatory reporters must report suspected abuse, neglect, or exploitation regardless of whether the information giving rise to their suspicion is based on any privileged communication. This includes, for example, doctor-patient confidentiality and attorney-client privilege.
- A member of the clergy is not required to report matters confided to him or her solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. If a clergy member receives information leading to suspected abuse, neglect, or exploitation from any other source, he or she must make a report in accordance with the above procedures, even if the alleged perpetrator also confided similar information.

Dated: 8/7/2015

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## **Internet Resources**

### Georgia Links

- Department of Human Services, [Division of Aging Services website](#):
  - [Reporting Information](#)
  - [Elder Abuse and Prevention Information](#)
  - Find your [Local Area Agencies on Aging](#)
- [Find Your Prosecuting Attorney](#)

### National Organizations:

- [National Adult Protective Services Association](#)
- U.S. Department of Health and Human Services' [National Center on Elder Abuse](#)
- [National Committee for the Prevention of Elder Abuse](#)

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