

Senate Bill 31

By: Senators Carter of the 42nd, Hamrick of the 30th, Seabaugh of the 28th, Crosby of the 13th, Cowsert of the 46th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 9 of Title 24 of the Official Code of Georgia Annotated,
2 relating to privilege, so as to extend the attorney-client privilege to third persons under
3 certain circumstances; to correct cross-references; to amend Code Section 17-16-94 of the
4 Official Code of Georgia Annotated, relating to disclosure required by the prosecuting
5 attorney and defendant, to correct a cross-reference; to provide for related matters; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 9 of Title 24 of the Official Code of Georgia Annotated, relating to
10 privilege, is amended by revising Code Section 24-9-21, relating to confidentiality of certain
11 communications, as follows:

12 "24-9-21.

13 (a) There are certain admissions and communications excluded on grounds of public
14 policy. Among these are:

- 15 (1) Communications between husband and wife;
- 16 (2) Communications between attorney and client;
- 17 (3) Communications among grand jurors;
- 18 (4) Secrets of state;
- 19 (5) Communications between psychiatrist and patient;
- 20 (6) Communications between licensed psychologist and patient as provided in Code
21 Section 43-39-16;
- 22 (7) Communications between patient and a licensed clinical social worker, clinical nurse
23 specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed
24 professional counselor during the psychotherapeutic relationship; and
- 25 (8) Communications between or among any psychiatrist, psychologist, licensed clinical
26 social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and

27 family therapist, and licensed professional counselor who are rendering psychotherapy
 28 or have rendered psychotherapy to a patient, regarding that patient's communications
 29 which are otherwise privileged by paragraph (5), (6), or (7) of this Code section.

30 (b) As used in this Code section, the term:

31 (1) 'Client' means a person who has employed or is seeking to employ an attorney or who
 32 has been provided a court appointed attorney or public defender; such term shall include
 33 such person's parent or legal custodian if such person is a minor and such person is
 34 accused of a crime or delinquent act or is seeking counsel in such matter.

35 (2) 'psychotherapeutic Psychotherapeutic relationship' means the relationship which
 36 arises between a patient and a licensed clinical social worker, a clinical nurse specialist
 37 in psychiatric/mental health, a licensed marriage and family therapist, or a licensed
 38 professional counselor using psychotherapeutic techniques as defined in Code Section
 39 43-10A-3, and the term 'psychotherapy'

40 (3) 'Psychotherapy' means the employment of 'psychotherapeutic techniques.'

41 **SECTION 2.**

42 Said article is further amended by revising subsection (b) of Code Section 24-9-23, relating
 43 to compellability of testimony by defendant's spouse, as follows:

44 "(b) The privilege created by subsection (a) of this Code section or by corresponding
 45 privileges in paragraph (1) of subsection (a) of Code Section 24-9-21 or subsection (a) of
 46 Code Section 24-9-27 shall not apply in proceedings in which the husband or wife is
 47 charged with a crime against the person of a minor child, but such person shall be
 48 compellable to give evidence only on the specific act for which the defendant is charged."

49 **SECTION 3.**

50 Said article is further amended by revising Code Section 24-9-24, relating to a client's
 51 communication to his or her attorney being privileged, as follows:

52 "24-9-24.

53 Communications to any attorney or to his or her employee to be transmitted to the attorney
 54 pending his or her employment or in anticipation thereof shall never be heard by the court.

55 The attorney shall not disclose the advice or counsel he or she may give to his or her client,
 56 nor produce or deliver up title deeds or other papers, except evidences of debt left in his the
 57 attorney's possession by his or her client. This Code section shall not exclude the attorney
 58 as a witness to any facts which may transpire in connection with his or her employment.

59 As used in this Code section, the term 'client' shall have the same meaning as set forth in
 60 Code Section 24-9-21."

61 **SECTION 4.**

62 Said article is further amended by revising Code Section 24-9-25, relating to when an
63 attorney may testify for or against a client, as follows:

64 "24-9-25.

65 No attorney shall be competent or compellable to testify for or against his or her client to
66 any matter or thing, the knowledge of which ~~he~~ the attorney may have acquired from his
67 or her client by virtue of his or her employment as attorney or by reason of the anticipated
68 employment of him or her as attorney. However, an attorney shall be both competent and
69 compellable to testify for or against his or her client as to any matter or thing, the
70 knowledge of which he or she may have acquired in any other manner. As used in this
71 Code section, the term 'client' shall have the same meaning as set forth in Code Section
72 24-9-21."

73 **SECTION 5.**

74 Code Section 17-16-4 of the Official Code of Georgia Annotated, relating to disclosure
75 required by the prosecuting attorney and defendant, is amended by revising subparagraph
76 (b)(3)(C) as follows:

77 "(C) The defendant shall, no later than five days before the trial commences, serve
78 upon the prosecuting attorney a list of witnesses that the defendant intends to call as a
79 witness in the presentence hearing. No later than the announcement of the verdict of
80 the jury or if the defendant has waived a jury trial at the time the verdict is published
81 by the court, the defendant shall produce for the opposing party any statement of such
82 witnesses that is in the possession, custody, or control of the defendants or the
83 defendant's counsel that relates to the subject matter of the testimony of such witnesses
84 unless such statement is protected from disclosure by the privilege contained in
85 paragraph (5), (6), (7), or (8) of subsection (a) of Code Section 24-9-21."

86 **SECTION 6.**

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