

The Senate Judiciary Committee offered the following substitute to SB 31:

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 17-16-4 of the  
4 Official Code of Georgia Annotated, relating to disclosure required by the prosecuting  
5 attorney and defendant, so as to correct a cross-reference; to amend Chapter 5 of Title 24 of  
6 the Official Code of Georgia Annotated, relating to privileges, so as to provide for  
7 definitions; to provide for related matters; to provide for an effective date and a contingent  
8 effective date; to provide for automatic repeal under certain circumstances; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 PART I

12 SECTION 1-1.

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

16 "24-9-21.

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

- 19 (1) Communications between husband and wife;
- 20 (2) Communications between attorney and client;
- 21 (3) Communications among grand jurors;
- 22 (4) Secrets of state;
- 23 (5) Communications between psychiatrist and patient;
- 24 (6) Communications between licensed psychologist and patient as provided in Code  
25 Section 43-39-16;

26 (7) Communications between patient and a licensed clinical social worker, clinical nurse  
 27 specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed  
 28 professional counselor during the psychotherapeutic relationship; and

29 (8) Communications between or among any psychiatrist, psychologist, licensed clinical  
 30 social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and  
 31 family therapist, and licensed professional counselor who are rendering psychotherapy  
 32 or have rendered psychotherapy to a patient, regarding that patient's communications  
 33 which are otherwise privileged by paragraph (5), (6), or (7) of this ~~Code section~~  
 34 subsection.

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

36 (1) 'Client' means a person who is represented by or is seeking representation from an  
 37 attorney or who has been provided a court appointed attorney or public defender. Such  
 38 term shall include a minor's parent if the minor is accused of a crime or delinquent act or  
 39 is seeking counsel in such matter; provided, however, that when the person is a minor  
 40 accused of a crime or delinquent act, only the minor has the right to waive the  
 41 attorney-client privilege.

42 (2) 'Parent' means:

43 (A) The legal mother of the child, as defined in Code Section 15-11-2;

44 (B) The legal father of the child, as defined in Code Section 15-11-2;

45 (C) The stepparent of the child;

46 (D) The legal guardian of the child;

47 (E) The foster parent of the child; and

48 (F) A person to whom legal custody of the child has been given by order of a court.

49 (3) 'Psychotherapeutic relationship' 'psychotherapeutic relationship' means the  
 50 relationship which arises between a patient and a licensed clinical social worker, a  
 51 clinical nurse specialist in psychiatric/mental health, a licensed marriage and family  
 52 therapist, or a licensed professional counselor using psychotherapeutic techniques as  
 53 defined in Code Section 43-10A-3 ~~and the term~~.

54 (4) 'Psychotherapy' 'psychotherapy' means the employment of 'psychotherapeutic  
 55 techniques.'

56 **SECTION 1-2.**

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

59 "(b) The privilege created by subsection (a) of this Code section or by corresponding  
 60 privileges in paragraph (1) of subsection (a) of Code Section 24-9-21 or subsection (a) of  
 61 Code Section 24-9-27 shall not apply in proceedings in which the husband or wife is

62 charged with a crime against the person of a minor child, but such person shall be  
63 compellable to give evidence only on the specific act for which the defendant is charged."

64 **SECTION 1-3.**

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

67 "24-9-24.

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

70 The attorney shall not disclose the advice or counsel he or she may give to his or her client,  
71 nor produce or deliver up title deeds or other papers, except evidences of debt left in his the

72 attorney's possession by his or her client. This Code section shall not exclude the attorney  
73 as a witness to any facts which may transpire in connection with his or her employment.

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

76 **SECTION 1-4.**

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

79 "24-9-25.

80 No attorney shall be competent or compellable to testify for or against his or her client to  
81 any matter or thing, the knowledge of which ~~he~~ the attorney may have acquired from his

82 or her client by virtue of his or her employment as attorney or by reason of the anticipated  
83 employment of him or her as attorney. However, an attorney shall be both competent and

84 compellable to testify for or against his or her client as to any matter or thing, the  
85 knowledge of which he or she may have acquired in any other manner. As used in this

86 Code section, the term 'client' shall have the same meaning as set forth in Code Section  
87 24-9-21."

88 **SECTION 1-5.**

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

92 "(C) The defendant shall, no later than five days before the trial commences, serve  
93 upon the prosecuting attorney a list of witnesses that the defendant intends to call as a

94 witness in the presentence hearing. No later than the announcement of the verdict of  
95 the jury or if the defendant has waived a jury trial at the time the verdict is published

96 by the court, the defendant shall produce for the opposing party any statement of such  
 97 witnesses that is in the possession, custody, or control of the defendants or the  
 98 defendant's counsel that relates to the subject matter of the testimony of such witnesses  
 99 unless such statement is protected from disclosure by the privilege contained in  
 100 paragraph (5), (6), (7), or (8) of subsection (a) of Code Section 24-9-21."

101 PART II

102 SECTION 2-1.

103 Chapter 5 of Title 24 of the Official Code of Georgia Annotated, relating to privileges, is  
 104 amended by revising subsection (b) of Code Section 24-5-501, relating to certain privileged  
 105 communications, as enacted by HB 24, substantially revising, superseding, and modernizing  
 106 provisions relating to evidence during the 2011-2012 biennium of the General Assembly, as  
 107 follows:

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

109 (1) 'Client' means a person who is represented by or is seeking representation from an  
 110 attorney or who has been provided a court appointed attorney or public defender. Such  
 111 term shall include a minor's parent if the minor is accused of a crime or delinquent act or  
 112 is seeking counsel in such matter; provided, however, that when the person is a minor  
 113 accused of a crime or delinquent act, only the minor has the right to waive the  
 114 attorney-client privilege.

115 (2) 'Parent' means:

116 (A) The legal mother of the child, as defined in Code Section 15-11-2;

117 (B) The legal father of the child, as defined in Code Section 15-11-2;

118 (C) The stepparent of the child;

119 (D) The legal guardian of the child;

120 (E) The foster parent of the child; and

121 (F) A person to whom legal custody of the child has been given by order of a court.

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

123 (4) 'Psychotherapeutic techniques' shall have the same meaning as provided in Code  
 124 Section 43-10A-3."

125 PART III

126 SECTION 3-1.

127 (a) This Act shall become effective on July 1, 2011, except as otherwise provided by  
 128 subsection (b) of this section.

129 (b)(1) Part II of this Act shall become effective only if HB 24, substantially revising,  
130 superseding, and modernizing provisions relating to evidence, is enacted during the  
131 2011-2012 biennium of the General Assembly and becomes law on or before January 1,  
132 2013, in which case Part II of this Act shall become effective on the same date that said  
133 HB 24 becomes effective.

134 (2) Part I of this Act shall stand repealed if and when Part II of this Act becomes  
135 effective as provided by paragraph (1) of this subsection.

136 (3) If said HB 24 does not become law on or before January 1, 2013, as provided by  
137 paragraph (1) of this subsection, then Part II of this Act shall stand repealed on January 1,  
138 2013.

139 **SECTION 3-2.**

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