

HOUSE BILL 605<sup>1</sup>: HEALTH; PROVIDE FOR AUTHORIZED ELECTRONIC MONITORING  
IN LONG-TERM CARE FACILITIES

*Amending O.C.G.A. Title 31, Chapter 8; to repeal conflicting law; and for  
other purposes.*

**First Signature:** Representative Sharon Cooper (43<sup>rd</sup>)

**Co-Sponsors:** Representative John LaHood (175<sup>th</sup>) and Senator John  
Kennedy (18<sup>th</sup>)

**First Reader Summary:** “A Bill to be entitled an Act to amend Chapter 8  
of Title 31 of the Official Code of Georgia Annotated, relating to care and  
protection of indigent and elderly patients, so as to provide for authorized  
electronic monitoring in long-term care facilities; to provide for definitions;  
to provide consent requirements; to provide for notice to the facility; to  
provide for relocation of a resident to another room; to provide for  
installation and costs; to provide for notice to visitors; to prohibit  
obstruction or destruction of electronic monitoring devices; to provide for  
protection of privacy rights; to provide for limited liability; to provide for a  
notification and consent form; to provide for related matters; to repeal  
conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** House Disagreed Senate Amend or Sub. <sup>3</sup>

TEXT OF HOUSE BILL 605 (SENATE SUBSTITUTE TO HOUSE BILL 605) <sup>4</sup>

### SECTION 1.

Chapter 8 of Title 31 of the Official Code of Georgia Annotated,  
relating to care and protection of indigent and elderly patients, is  
amended by adding a new article to read as follow:

"ARTICLE 5B

31-8-140.

As used in this article, the term:

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<sup>1</sup> H.B. 605, 156th Ga. Gen. Assemb., 2nd Reg. Sess. (Ga. 2021),  
<https://www.legis.ga.gov/api/legislation/document/20212022/202352> \ (last visited Feb. 19,  
2022).

<sup>2</sup> *2021-2022 Regular Session-H.B. 605, Health; provide for authorized electronic  
monitoring in long-term care facilities*, GA. GEN. ASSEMB.,  
<https://www.legis.ga.gov/legislation/59980> (last visited ) [hereinafter H.B. 605 Status  
Sheet].

<sup>3</sup> *Id.*

<sup>4</sup> H.B. 605, *supra* note 1.

(1) 'Authorized electronic monitoring' means the open and obvious use of an electronic monitoring device by a resident to monitor the resident or activities within the resident's room in accordance with this article.

(2) 'Department' means the Department of Community Health.

(3) 'Designated agent' means an individual listed in paragraphs (1) through (6) of subsection (a) of Code Section 31-9-2.

(4) 'Electronic monitoring device' means a video camera or an audio recording device, or a combination thereof, that broadcasts, records, or both activity or sounds.

(5) 'Facility' means any skilled nursing facility, intermediate care home, assisted living community, or personal care home subject to regulation and licensure by the department under Chapter 7 of this title.

(6) 'Notification and consent form' means a document substantially similar to the form set forth in Code Section 31-8-148.

(7) 'Physician' means an individual licensed to practice medicine in this state.

(8) 'Resident' means a person who receives care and treatment and resides in a facility.

31-8-141.

(a) Before initiating authorized electronic monitoring inside a facility, a resident shall substantially meet the requirements of this article. If the resident lacks decision-making capacity, the form may be completed and submitted by a designated agent of the resident. The notification and consent form shall either be on a form substantially similar to the form set forth in Code Section 31-8-148 or include at least:

(1) A statement affirming that the resident or resident's designated agent, subject to any noted restrictions, consents to the use of authorized electronic monitoring;

(2) If the resident has a roommate or roommates, a statement affirming that each roommate or roommate's designated agent, subject to any noted restrictions, consents to the use of authorized electronic monitoring;

(3) A description of the electronic monitoring device to be used in the authorized electronic monitoring, including the brand name and model number, and the installation and operating requirements; and

(4) Restrictions that the resident, the resident's designated agent, the resident's roommate, or the resident's roommate's

designated agent may impose on the placement and use of the electronic monitoring device to be used in the authorized electronic monitoring, including, but not limited to, any of the following:

(A) Prohibitions on video or audio recording;

(B) Prohibitions on broadcasting video or audio recordings;

(C) Requiring that the electronic monitoring device be turned off or blocked during an examination or procedure by a specified health care provider;

(D) Requiring that the electronic monitoring device be turned off or blocked while dressing, bathing, or personal care is being performed;

(E) Requiring that the electronic monitoring device be turned off or blocked during a visit with an intimate partner;

(F) The signature of the resident or his or her designated agent and the date of signing; and

(G) If the resident has a roommate or roommates, the signature of each roommate or his or her designated agent, and the date of signing.

(b) Consent by a roommate or roommate's designated agent to use authorized electronic monitoring constitutes authorization to the resident's use of any video or audio recording obtained in accordance with this Code section and pursuant to subsection (c) of 31-8-146.

(c) Any amendments to the information contained in the notification and consent form shall be in writing, signed, and dated, and submitted to the facility. The notification and consent form, or an amendment to it, shall not be effective until 24 hours after it has been received by the facility.

(d) If a notification and consent form or an amendment to the form is signed by a designated agent, it shall also include either a statement from a physician who has evaluated the resident that the resident, on whose behalf the designated agent is acting, lacks decision-making capacity, or a copy of the guardianship order, power of attorney, or similar authority.

(e) Upon receiving a completed notification and consent form, or any amendment to the form, the facility shall place the form in the resident's file and provide a copy to the resident or his or her designated agent and to the resident's roommate or roommates or his or her designated agent, if applicable.

(f) Any electronic monitoring device used for authorized electronic monitoring shall be in an open and obvious location and shall not be hidden in another device or item.

(g) No person shall conduct authorized electronic monitoring in a manner that is inconsistent with this article. No person shall conduct clandestine use of an electronic monitoring device to monitor a resident's room, unless otherwise authorized by law.

31-8-142.

(a) If any of the resident's roommates refuse to consent to authorized electronic monitoring, the facility shall, upon the written request of the resident, relocate the resident to another room as soon as the circumstances permit; provided, however, that the facility is not required to provide the resident with a private or single room, unless the resident agrees to pay the increased charges.

(b) During the period of any delay in a requested relocation as provided in subsection (a) of this Code section, the resident shall be permitted to install a video-only electronic monitoring device, provided that such device is installed to monitor only the resident.

(c) In order to assist the resident or the resident's designated agent with implementation of authorized electronic monitoring, the facility shall provide the contact information for a roommate's designated agent, where known, if the roommate is incapacitated.

31-8-143.

(a) A resident may not use a facility's local area network for authorized electronic monitoring unless the facility provides written consent to the resident. Subject to subsection (d) of this Code section, a facility that consents to a resident's use of a local area network may impose reasonable conditions on the use of such network to prevent a data breach and to limit the consumption of available bandwidth.

(b) If a facility does not consent to a resident's use of its local area network, the resident may, at the resident's cost, arrange for access to the internet through an internet service provider. The facility may impose reasonable conditions on the installation of any wire, cable, or other technologies, required for internet access only to:

(1) Prevent permanent damage to the facility; provided, however, that the resident or resident's designated agent shall be responsible for the cost of repair of any physical damage to the facility that occurs as a result of authorized electronic monitoring;

(2) Avoid the creation of a safety hazard; or

(3) Avoid the violation of any applicable building or electrical code.

(c) All electronic monitoring device installations and supporting services for authorized electronic monitoring shall comply with the requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code (2000 edition).

(d) A facility may not charge a resident a fee for the cost of electricity used for authorized electronic monitoring, and, if the facility charges a resident a fee for the use of data, such fee shall be reasonable.

(e)(1) The resident or resident's designated agent may install or maintain an electronic monitoring device for authorized electronic monitoring in accordance with this Code section.

(2) The facility shall not:

(A) Be required to or mandate that it install or maintain the resident's selected electronic monitoring device or devices for authorized electronic monitoring in compliance with this article; or

(B) Bar or attempt to limit the ability of a resident, resident's designated agent, or other agent of such resident or resident's designated agent to install or maintain an electronic monitoring device for authorized electronic monitoring in compliance with this article.

31-8-144.

(a) If a resident conducts authorized electronic monitoring, a sign shall be clearly and conspicuously posted by the facility at the entrance to a resident's room where authorized electronic monitoring is being conducted. The sign shall state in large, easy-to-read type, 'This room is electronically monitored.'

(b) The facility shall be responsible for installing and maintaining the signage required by this Code section.

31-8-145.

(a) A person is prohibited from knowingly hampering, obstructing, tampering with, or destroying an electronic monitoring device used for authorized electronic monitoring installed in a resident's room without the permission of the resident or the resident's designated agent.

(b) Except as otherwise provided in this article, a person may not access or disseminate a recording produced through authorized electronic monitoring without the written consent of the resident or his or her designated agent.

(c) Except as directed by the resident or the resident's designated agent, a facility may only move or adjust an electronic monitoring

device to ensure such electronic monitoring device is installed, placed, or used in accordance with the terms of the notification and consent form filed with the facility pursuant to subsection (a) of 31-8-141.

(d) A court may consider evidence that a person violated subsection (a) of this Code section.

31-8-146.

(a) A person who possesses material captured through authorized electronic monitoring shall, upon the facility's written request, provide a copy of the recording to the facility if an allegation of neglect, abuse, negligence, or other misconduct has been filed or if a demand letter threatening litigation has been sent to the facility in a civil, criminal, or administrative action, and the recording, or any portion thereof, contains alleged evidence related to the allegation or threatened allegation. The facility shall reimburse the person with the recording for any reasonable costs incurred by providing the recording.

(b) Subject to the applicable rules of evidence and procedure, requests for discovery of video or audio recordings captured pursuant to authorized electronic monitoring shall be directed to the resident or the designated agent who consented on behalf of the resident to the authorized electronic monitoring, and such requests shall not be directed to the facility.

(c) Subject to the applicable rules of evidence and procedure, video and audio recordings captured pursuant to authorized electronic monitoring may be admitted into evidence in a civil, criminal, or administrative proceeding if such video or audio recordings were obtained in accordance with the conditions and provisions of this article.

(d) There shall be no duty for a resident or a resident's designated agent to retain material captured through authorized electronic monitoring as referenced in subsection (a) of this Code section, except after receipt of a written request from a facility pursuant to subsection (a) of this Code section by such resident or resident's designated agent, whereupon failure to retain such material, if available, may result in a presumption against the resident or resident's designated agent as provided in Code Section 24-14-22.

31-8-147.

(a) A facility shall not be civilly or criminally liable for any violation of a person's right to privacy arising out of the use of authorized electronic monitoring, including by third parties, except

to the extent the violation was caused by the facility's intentional violation of this article.

(b) A facility may not discriminate against a resident or roommate for using, requesting, consenting to, or refusing to consent to the use of authorized electronic monitoring.

(c) A facility may not discriminate against any potential resident or potential roommate for using, requesting, consenting to, or refusing to consent to the use of authorized electronic monitoring.

31-8-148.

(a) This document or a document substantially similar to the following form may be used to create a notification and consent form that has the meaning and effect prescribed by this article.

**'NOTICE OF AUTHORIZED ELECTRONIC MONITORING**

Resident's Name \_\_\_\_\_ Date \_\_\_\_\_  
I, \_\_\_\_\_, elect at my own  
expense to conduct  
Resident  
authorized electronic monitoring in my room \_\_\_\_\_  
Room Number \_\_\_\_\_

Resident or Designated Agent Signature \_\_\_\_\_ Date Resident \_\_\_\_\_  
Consented to Authorized \_\_\_\_\_  
Electronic \_\_\_\_\_  
Monitoring \_\_\_\_\_

Resident or Designated Agent Printed Name \_\_\_\_\_

Type of electronic monitoring device to be used: audio/video (circle one or both)

Make/Model/Type: \_\_\_\_\_

Installation needs (if any): \_\_\_\_\_

Proposed date of installation: \_\_\_\_\_

Resident authorizes continuous 24/7 video and audio recording

OR

Resident's restrictions (check all that apply):

Prohibit Audio Recording

Prohibit Video Recording

Turn Off Device for Duration of an Examination or Procedure by a Physician or the Following Other Health Care Provider or Providers:

Block Visual Recording for Duration of an Examination or Procedure by a Physician or the Following Other Health Care Provider or Providers:

Turn Off Device while Dressing, Bathing, or other Personal Care is Performed

Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed

Turn Off Device for the Duration of a Visit with an Intimate Partner

Other Conditions/Restrictions (please specify)

ROOMMATE CONSENT

Roommate Name \_\_\_\_\_ Date \_\_\_\_\_

I, \_\_\_\_\_, consent to my roommate's use of authorized

Roommate \_\_\_\_\_  
electronic monitoring in our room \_\_\_\_\_.

Room Number \_\_\_\_\_

\_\_\_\_\_  
Roommate or Designated Agent Signature \_\_\_\_\_ Date \_\_\_\_\_

Roommate Consented to Authorized Electronic Monitoring

\_\_\_\_\_  
Roommate or Designated Agent Printed Name

Roommate authorizes continuous 24/7 video and audio recording  
OR

Roommate's restrictions (check all that apply):

Prohibit Audio Recording

Prohibit Video Recording



Turn Off Device for Duration of an Examination or Procedure by a Physician or the Following Other Health Care Provider or Providers:

Block Visual Recording for Duration of an Examination or Procedure by a Physician or the Following Other Health Care Provider or Providers:

Turn Off Device while Dressing, Bathing, or other Personal Care is Performed

Block Visual Recording while Dressing, Bathing, or other Personal Care is Performed

Turn Off Device for the Duration of a Visit with an Intimate Partner

Use of Data Obtained by Device:

Must obtain my consent before disseminating, publishing, or otherwise sharing the recording with third parties for something other than an administrative or legal proceeding

Other Conditions/Restrictions (please specify) \_\_\_\_\_

For Internal Use Only

Date Received \_\_\_\_\_

Received By \_\_\_\_\_

(b) The department shall maintain a link on its website to the document set out in subsection (a) of this Code section. Such linked document shall be in a format which shall enable a person to complete the document online and print it or to print the document and complete the document in writing.

31-8-149.

Nothing in this article shall be construed to preclude the use of electronic monitoring devices nor the admissibility of audio or video recordings in civil, criminal, or administrative action as otherwise authorized by law, including, but not limited to, recordings obtained in accordance with subparagraph (2)(B) of Code Section 16-11-62."

**SECTION 2.**

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

#### SPONSOR'S RATIONALE

Representative Cooper, who also serves as State Chairwoman of the House of the Health and Human Services Committee, introduced House Bill 605 to “help keep residents safe by setting up a process for families to install ‘in-view’ cameras authorized by the [nursing] homes and allowing that footage to be used in both civil and criminal court cases.”<sup>5</sup> The goal of House Bill 605 is to ensure that “facilities communicate openly and transparently when installing video audio cameras in residence room while protecting the privacies of roommates.”<sup>6</sup> Sponsors and supporters of House Bill 605 advocate for protection of the patient’s mental, physical, emotion, wellbeing and safety.<sup>7</sup> What is “core,” Representative Cooper emphasized, “...in this Bill [is] that it’s about patient protection, protecting the privacy, the mental well-being, and their privacy rights of the seniors.”<sup>8</sup> House Bill 605 addresses Representative Cooper’s passions because it is “a bill to combat elder abuse.”<sup>9</sup>

On its face, House Bill 605 seems to build on previous attempts to pass similar measures that would permit electronic monitoring and consensual surveillance within nursing homes.<sup>10</sup> With the onset of the pandemic, the nursing home cameras became a more pressing issue.<sup>11</sup> While previous legislation was in response to the pandemic,<sup>12</sup> House Bill 605 was

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<sup>5</sup> Carrie Teegardin, *After Intense Debate, ‘Granny Cams’ Bill Fails*, ATLANTA JOURNAL-CONSTITUTION (Apr. 1, 2021), <https://www.ajc.com/news/investigations/after-intense-debate-granny-cams-bill-fails/VG4FL336NJCQFBTRSMXTHF7TMQ/>.

<sup>6</sup> The Georgia Senate, *Senate Committee on Health and Human Services*, YOUTUBE (Mar. 23, 2021), <https://youtu.be/RttEWs49ySI> (beginning at 22:21).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Biography of Rep. Sharon Cooper*, GA. GEN. ASSEMB., <https://www.legis.ga.gov/api/document/docs/default-source/bios/cooper-sharon-86.pdf> (last visited Feb 17, 2022). Representative Cooper has been a long-term advocate for the protection of rights, health, and safety of living conditions of tenants. *Id.*

<sup>10</sup> *See 2019-2020 Regular Session-H.B. 135; Authorized Electronic Monitoring in Long-term Care Facilities Act*; enact, <https://www.legis.ga.gov/legislation/54535> (insert brief summary of bill).; *see also 2019-2020 Regular Session – H.B. 849, weblink* (insert a brief summary of bill).

<sup>11</sup> Carrie Teegardin, *Lawmaker Says Nursing Homes Need ‘Granny Cams,’* ATLANTA JOURNAL-CONSTITUTION (Sept. 4, 2020), <https://www.ajc.com/news/investigations/lawmaker-says-nursing-homes-need-granny-cams/Q3NG7HNIHZGPBCYPP2V4G6RSC4/>.

<sup>12</sup> *Id.*

motivated by the Supreme Court ruling in *Nuckles v. State*,<sup>13</sup> and what appears to be an influx in exposed cases of elder abuse in nursing homes.<sup>14</sup> *Nuckles* revealed the severity of nursing home abuse and how cameras and video<sup>15</sup> aid in prosecution of allegations of neglect and abuse in nursing homes.<sup>16</sup> In *Nuckles*, after the death of a resident was caught by use of a hidden camera, Wanda Nuckles and two other members of the nursing home staff were charged with depriving an elder person of essential services and concealing his death.<sup>17</sup>

In 2019, an investigation into elder abuse in long-term care facilities “identified more than 600 allegations involving neglect and 90 [allegations] of abuse by caregivers . . . .”<sup>18</sup> However, this number does not include unreported cases, unsubstantiated thus undisclosed cases, ignored cases, and undocumented cases.<sup>19</sup> Melanie McNeil, Georgia’s long-care

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<sup>13</sup>, 853 S.E.2d 81, 89 (Ga. 2020).

<sup>14</sup> Teegardin, *supra* note 11.

<sup>15</sup> Andy Pierrotti, *Top Court Says Hidden Camera Video of Veteran Calling for Help, Gasping for Air Can Be Used in Murder Trial*, 11 ALIVE (Dec. 21, 2020), <https://www.11alive.com/article/news/investigations/the-reveal/supreme-court-hearing-on-nursing-home-video/85-77fb1580-42aa-4cbe-b21d-e5a784938b85>; see also 11Alive, *Hidden camera tells true story of how veteran died in nursing home*, YOUTUBE (Nov. 13, 2017), <https://www.youtube.com/watch?v=IU6NIK3OQDc&t=1s>. Released video footage of Mr. Dempsey’s final hours show Mr. Dempsey calling for help and the Defendants allegedly laughing and not immediately rendering aid when Mr. Dempsey later becomes unresponsive.

<sup>16</sup> 2021 AARP Georgia Legislative Session, AARP, <https://states.aarp.org/georgia/2021-aarp-georgia-legislative-update>.

<sup>17</sup> *Nuckles*, 853 S.E.2d at 83.

<sup>18</sup> Brad Schrade & Carrie Teegardin, *Suffering Behind the Façade*, ATLANTA JOURNAL CONSTITUTION (Sept. 29, 2019), <https://www.ajc.com/news/state--regional/suffering-behind-the-facade/gEMTySxJUMEQ6GhD1OQiFO/>. This figure includes only private-pay senior care facilities. *Id.* See also *Abuse of Elder, At-Risk, Georgians*, OFF. ATTY. GEN., <https://law.georgia.gov/key-issues/abuse-elder-risk-georgians> (last visited Dec. 24, 2021). Georgia has enacted special laws which protect “residents 65 years of age and older, disabled adults who are 18 years of age and older who are mentally or physically incapacitated or have Alzheimer’s disease or dementia, and residents of long-term care facilities, [who] due to their age and/or disability, may be at increased risk for abuse, neglect, and exploitation.”; See also, Brad Schrade & Carrie Teegardin, *Suffering Behind the Façade*, ATLANTA JOURNAL CONSTITUTION (Sept. 29, 2019), <https://www.ajc.com/news/state--regional/suffering-behind-the-facade/gEMTySxJUMEQ6GhD1OQiFO/>. See also Jennifer L. Troyer, *Examining Differences in Death Rates for Medicaid and Non-Medicaid Nursing Home Residents*, 42 Medical Care 985, 985-91 (2004) (examining differences in death rates for Medicaid and non-Medicaid nursing home residents). Jennifer L. Troyer finds little difference in the probability of death rates between Medicaid (public funded) and private-pay residents. *Id.*

<sup>19</sup>Carrie Teegardin, *Georgia Families in the Dark About Risks*, ATLANTA JOURNAL-CONSTITUTION (Sept. 30, 2019), <https://www.ajc.com/news/state--regional-govt-->

Ombudsman, believes these “information gaps” create the “need [for] more accountability of facilities and more transparency so that residents and families know what is going on in facilities...”<sup>20</sup> It is the combination of the need for transparency and her fight to “protect Georgia’s most vulnerable populations” that motivated House Representative Sharon Cooper to sponsor House Bill 605, also known as the “Granny Cam” Bill.<sup>21</sup>

The purpose of House Bill 605 is to promote open and transparent communication.<sup>22</sup> Passage of House Bill 605 would not be the first electronic monitoring bill passed in response to suspicions of abuse of vulnerable patients or those who are unable to care for themselves.<sup>23</sup> “It is human nature. If you are knowing you are being watched, you will do it a little.”<sup>24</sup> Understanding that it would be impossible to “prevent everything,” Representative Cooper supports House Bill 605 as “an effort to prevent criminal activity and change behavior through open cameras.”<sup>25</sup> Representative John LaHood, “who owns and operates six long-term care communities in the State of Georgia,” joined Representative Cooper in

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politics/georgia-families-the-dark-about-risks/Kj9tw0EQcU27QVUYScmML/. Georgia’s policy is to not disclose information about the nature of allegations when the complaints are not substantiated. *Id.* However, 30% of the homes investigated did not report incidents as required. *Id.* See also *Elder Abuse: Abuse, Neglect, and Exploitation*, GA. COUNCIL ON AGING, (2022), <https://www.gcoa.org/elder-abuse> (estimating that over 23.5 unreported cases of elder abuse for every reported case of elder abuse); .

<sup>20</sup> Teegardin, *supra* note 19; see also *Ombudsman Long Term Care Residents’ Advocate*, OFF. STATE LONG-TERM CARE OMBUDSMAN (GA), <https://www.georgiaombudsman.org/programs/> (last visited Dec. 22, 2021). The Ombudsman program is authorized by the Older Americans Act and Georgia law to investigate and “provide advocacy and informal resolution” of complaints and concerns on behalf of residents of long-term care facilities. *Id.*

<sup>21</sup> Sharon Cooper, FACEBOOK (Feb. 5, 2020), <https://www.facebook.com/SharonCooperHD43/photos/as-chairwoman-of-the-house-health-and-human-services-committee-i-have-fought-to-524582658176524/>; see also Jay W. Marks, *Medical Definition of Granny Cam*, MEDICINENET.COM, (Jun. 3, 2021), [https://www.medicinenet.com/granny\\_cam/definition.htm](https://www.medicinenet.com/granny_cam/definition.htm) (defining a granny cam as “a camcorder that displays a live feed of elderly people, as in a nursing home, to keep an eye on them and the care they receive”).

<sup>22</sup> GPB Lawmakers, *Georgia House 2021 – Day 27, Afternoon Part One*, YOUTUBE (Mar. 8, 2021), <https://www.youtube.com/watch?v=nmH5BJkwrek&t=16s>.

<sup>23</sup> Johnny Jackson, *Gov. Deal Signs Rep. Stovall’s Landon Dunson’ Act into Law*, CLAYTON NEWS-DAILY, (May 6, 2016), [https://www.news-daily.com/news/gov-deal-signs-rep-stovall-s-landon-dunson-act-into-law/article\\_5bac50f0-799c-5a84-8461-610c8fbc1489.html](https://www.news-daily.com/news/gov-deal-signs-rep-stovall-s-landon-dunson-act-into-law/article_5bac50f0-799c-5a84-8461-610c8fbc1489.html). In response to “concerns of alleged abuse in classrooms that provide special education services,” the Landon Dunson Act was passed to “allow videos and monitoring equipment in classrooms that offer special education services for educational and safety purposes.” *Id.*

<sup>24</sup> GPB Lawmakers, *supra* note 22.

<sup>25</sup> *Id.*

sponsoring House Bill 605.<sup>26</sup> Representative LaHood supports this Bill because he believes the use of exposed cameras, is a preventative measure against elder abuse.<sup>27</sup>

Supporters of the House Bill 605 also include Georgia's long-term care ombudsman, Melanie McNeil, and Ginny Helms of Leading Age Georgia.<sup>28</sup> Helms supports House Bill 605 because [h]idden cameras 'create an environment of distrust.'<sup>29</sup>

#### OPPOSITION'S RATIONALE

Representative Mary Francis Williams believes that the nuances with paperwork may prove too complicated.<sup>30</sup> The consent forms must be signed by both the residents and the roommate.<sup>31</sup> Representative Williams believes that due to liability issues, the facility and its staff may be reluctant to touch a camera.<sup>32</sup> Therefore, a patient must follow up if a camera is turned off there is no recourse under the Bill.<sup>33</sup>

Like Representative Williams, others in opposition to House Bill 605 believe that "for cameras to be truly helpful, they must be hidden."<sup>34</sup> Representative Josh McLaurin believes that the right to put a hidden camera in a room is a secret option that means an opportunity to "breathe a sigh of relief."<sup>35</sup> He does not support House Bill 605 as "a real protection"<sup>36</sup> because the Bill does not provide ramifications for tampering with the cameras,<sup>37</sup> nor does House Bill 605 hold the facility liable for damages to the cameras.<sup>38</sup> Opponents of the Bill also include the Georgia Council on Aging, the Alzheimer's Association, and the American Association of Retired Persons

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<sup>26</sup> Andy Pierrotti, *Hidden Camera Use in Nursing Homes Sparks Debate Among Georgia Lawmakers*, 11 ALIVE (Nov. 15, 2021), <https://www.11alive.com/article/news/investigations/the-reveal/hidden-camera-nursing-homes-debate/85-7f2e78d9-3907-49ac-880c-081fe04733b4>.

<sup>27</sup> Pierrotti, *supra* note 39. According to Representative LaHood, "Cameras out in the open...disclosed...do much more to prevent bad outcomes, bad incidents, bad behaviors occurring." *Id.*

<sup>28</sup> Andy Miller, *Cameras in Nursing Homes: Bill Advances After Close Vote*, GEORGIA HEALTH NEWS (Mar. 24, 2021), <http://www.georgiahealthnews.com/2021/03/cameras-nursing-homes-bill-advances-dispute/>.

<sup>29</sup> *Id.*

<sup>30</sup> GPB Lawmakers, *supra*, note 22 (beginning at 18:40).

<sup>31</sup> H.B. 605, *supra* note 1.

<sup>32</sup> *Id.*

<sup>33</sup> GPB Lawmakers, *supra* note 22 . (beginning at 19:10).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* (beginning at 23:56).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

(“AARP”),<sup>39</sup> all of whom are concerned with the lack of penalties for blocking, turning off, or unauthorized tampering with the cameras.<sup>40</sup>

Additionally, House Bill 605 prohibits the use of videos from hidden cameras in civil actions or administrative hearings.<sup>41</sup> House Bill 605 appears “pro-facility” instead of “pro-resident,”<sup>42</sup> limiting “accountability to criminal prosecution only, not being responsible for damages to the plaintiff that they may have caused.”<sup>43</sup> Videos captured through hidden cameras can be used for the purpose of criminal proceedings, only, while videos captured with open cameras can be used in civil, criminal, and administrative proceedings.<sup>44</sup> Senator Cowsert believes this limitation elicits the “effect [of]...holding [the wrong doer] responsible in a criminal process where they might go to prison, but...not holding the wrong doer or the facility that’s accommodating it civilly responsible for damages that they cause.”<sup>45</sup> The point of contention for opponents of House Bill 605 is the inability to hold the staff, as well as the facility that employs the staff, criminally and civilly liable,<sup>46</sup> and to use the videos, lawfully – criminally, civilly, and administratively.<sup>47</sup> They are concerned that House Bill 605 would make it “impossible, the use of hidden cameras,” which the Georgia Supreme Court ruling made possible in 2020.<sup>48</sup> Limiting the use of videos takes away a families’ “right to protect their own private loved ones, by their own private means, and [that] whatever evidence they collect on that video recording will be admissible in a criminal proceeding, to hold people accountable, or a civil proceeding to sue for damages.”<sup>49</sup>

#### IMPLICATIONS IN GEORGIA

If enacted, House Bill 605 would require: (1) written consent from resident and roommate prior to installation of camera with a request and stipulation

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<sup>39</sup> *Id.* (beginning at 18:20).

<sup>40</sup> Carrie Teegardin, ‘Granny Cam’ Bill Disappoints Senior Advocates, ATLANTA-JOURNAL CONSTITUTION (Mar. 19, 2021), <https://www.ajc.com/news/investigations/granny-cams-bill-disappoints-senior-advocates/M6IPKOTRDBDXVBVCFVDBIZZJDA/>.

<sup>41</sup> GPB Lawmakers, *supra*, note 22 (beginning at 18:35).

<sup>42</sup> *Id.*

<sup>43</sup> The Georgia State Senate, *supra* note 6, (beginning at 1:16:18).

<sup>44</sup> *Id.* beginning at 1:09:57. *See also* H.B. 605, *supra* note 1: “Nothing in this article shall be construed to preclude the use of electronic monitoring devices nor the admissibility of audio or video recordings in civil, criminal, or administrative action as otherwise authorized by law, including, but not limited to, recordings obtained in accordance with subparagraph (2)(B) of Code Section 16-11-62.”

<sup>45</sup> The Georgia State Senate, *supra* note 6, (beginning at 1:15:53).

<sup>46</sup> Pierrotti, *supra* note 26.

<sup>47</sup> The Georgia State Senate, *supra*, note 6, (beginning at 1:15:53).

<sup>48</sup> *Id.* (referring to the Georgia Supreme Court ruling in *Nuckles*, 853 S.E.2d 81, 89 (2020)).

<sup>49</sup> GPB Lawmakers, *supra*, note 22, beginning at 24:37.

as to how long the camera will remain on and recording; (2) that devices be placed in open and obvious placement with visible signage concerning the use of the device; (3) clarification that any recordings derived may still be used in criminal proceedings pursuant to O.C.G.A. § 16-11-62(2)(B);<sup>50</sup> (4) access to internet;<sup>51</sup> (5) repair to premises during installation;<sup>52</sup> (6) forbid obstruction, dissemination, or adjustment by anyone; (7) that the recordings are the property of the residents and are subject to compliance with the Georgia Open Records Act.<sup>53</sup> Georgia law currently permits a family member to place a hidden camera within the room and record.<sup>54</sup> This footage can be used in all court proceedings against both the accused and the facility—civilly and criminally. Under House Bill 605, no hidden camera video footage capturing any abuse would be admissible in civil or administrative proceedings.<sup>55</sup> In addition, although the employee could be held criminally liable for the harm to the victim, the operators of the facilities do not face any civil liability.<sup>56</sup>

Residents age 65 and older make up 14.3% of Georgia’s population,<sup>57</sup> and 69% of the senior population will require a nursing home or assisted living.<sup>58</sup> The number of elders over the age of 65 who require nursing home care is expected to increase by 50%.<sup>59</sup> Georgia currently has 357 nursing homes.<sup>60</sup> Some long-term care facility operators and owners are installing their own facility-approved and facility operated cameras in the buildings.<sup>61</sup> However, because the installation is private, absent statute or legal proceedings, state regulators have limited “access to hidden camera

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<sup>50</sup> O.C.G.A. § 16-11-62(2)(B). *Unlawful eavesdropping or surveillance*. Use of devices for specific purposes of crime detection and prevention in specific areas where there is no reasonable expectation of privacy.

<sup>51</sup> H.B. 605, *supra* note 1.

<sup>52</sup> *Id.*

<sup>53</sup> Doug Richards. ‘Granny-Cam’ Bill is Passed in State House Despite Concerns from *Democrats*, 11 ALIVE (Mar. 5, 2021), <https://www.11alive.com/article/news/politics/granny-cam-bill-passes-despite-concerns/85-045e9f99-409c-4476-8160-8835f2786748>.

<sup>54</sup> *See Nuckles*, 853 S.E.2d 81 (2020); O.C.G.A. § 16-11-62(2)(B).

<sup>55</sup> Pierrotti, *supra* note 26.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Caring.com, *Nursing Homes in Georgia*, <https://www.caring.com/senior-living/nursing-homes/georgia>.

<sup>59</sup> National Center on Elder Abuse, (citing PRB., (2019, July), Fact Sheet: Aging in the United States. Retrieved from <https://www.prb.org/aging-unitedstates-fact-sheet/>. [https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#\\_edn29](https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx#_edn29).

<sup>60</sup> *The Big List of Georgia Nursing Homes and Rehab Facilities Medicare and Medicaid Rehab | Alzheimers Care*, The Dibbern Family, <https://www.dibbern.com/nursing-homes/georgia/georgia-nursing-homes-directory.htm#Listings> (last visited Dec. 26, 2021).

<sup>61</sup> *Id.*

video...”<sup>62</sup> In addition, for some, a violation of privacy may be an “unintended consequence,” of quality care.<sup>63</sup>

#### LEGISLATIVE GENEALOGY

House Bill 605 was first filed in the House on February 23, 2021.<sup>64</sup> House Hopper on February 23, 2021.<sup>65</sup> The House first read the Bill, on February 23, 2021.<sup>66</sup> On February 24, 2021, the House read the Bill a second time.<sup>67</sup> The House Committee Favorably reported the Bill by substitute, on March 3, 2021.<sup>68</sup> On March 5, 2021, the House read the Bill a third time. The House modified the structure rule, on March 5, 2021, and passed/adopted the Bill by substitute, and sent the Bill to the Senate.<sup>69</sup> On March 8, 2021, the Senate read the Bill and referred the Bill for substitute and modifications.<sup>70</sup> The Senate read the Bill a second time, on March 25, 2021.<sup>71</sup> On March 29, 2021, the Senate tabled the Bill.<sup>72</sup> On March 31, 2021, the Senate read the bill a third time.<sup>73</sup> The Senate agreed to the Bill substitute, on March 31, 2021, and the Senate passed/adopted the Bill by substitute.<sup>74</sup> The Senate sent the Bill to the House, and on March 31, 2021, the House disagreed to the Senate substitute.<sup>75</sup>

**Prepared by:** *M. Danielle Jones*

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<sup>62</sup> *Id.*

<sup>63</sup> Jennifer Anderson, *Cameras Rate Low for Ensuring Nursing Home Care*, TODAY'S GERIATRIC MEDICINE, [https://www.todaysgeriaticmedicine.com/news/ex\\_012315.shtml](https://www.todaysgeriaticmedicine.com/news/ex_012315.shtml) (last visited Dec. 24, 2021),

<sup>64</sup> H.B. 605, *supra* note 1.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> H.B. 605, *supra* note 1.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*