

House Bill 72 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 51st, Jones of the 47th, Abrams of the 89th, Cooper of the 43rd, Hugley of the 136th, and others

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 16, Article 1 of Chapter 8 of Title 17, Chapter 5 of Title 30, and Title 31 of
2 the Official Code of Georgia Annotated, relating to crimes and offenses, general provisions
3 for trial, protection of disabled adults and elder persons, and health, respectively, so as to to
4 expand and clarify protection of disabled adults and elder persons; to provide for and revise
5 definitions; to prohibit private causes of actions or civil remedies pursuant to provisions of
6 the "Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act"; to provide for
7 venue; to provide for abuse, neglect, and exploitation of disabled adults, elder persons, and
8 residents as a racketeering activity; to provide for priority scheduling of cases when the
9 alleged victim is a disabled adult or elder person; to change provisions relating to reporting
10 abuse, neglect, and exploitation of disabled adults and elder persons; to change provisions
11 relating to inspection of premises pursuant to inspection warrants; to repeal provisions
12 relating to exclusion of evidence obtained during the execution of an inspection warrant; to
13 amend Code Section 24-12-21 of the Official Code of Georgia Annotated, relating to
14 disclosure of AIDS confidential information, so as to change provisions relating to disclosure
15 of such information under certain circumstances; to provide for procedure; to amend Chapter
16 1 of Title 51 of the Official Code of Georgia Annotated, relating to general provisions
17 relative to torts, so as to revise the Good Samaritan law to provide for damaging property in
18 emergency situations; to amend Code Section 16-3-20 of the Official Code of Georgia
19 Annotated, relating to justification, so as to cross-reference the Good Samaritan law; to
20 provide for related matters; to repeal conflicting laws; and for other purposes.

21 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

22 **PART I**
23 **SECTION 1-1.**

24 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
25 amended in Code Section 16-5-100, relating to definitions for the protection of elder persons,
26 by adding a new paragraph to read as follows:

27 "(7.1) 'Mentally or physically incapacitated' means an impairment which substantially
28 affects an individual's ability to:

29 (A) Provide personal protection;

30 (B) Provide necessities, including but not limited to food, shelter, clothing, medical,
31 or other health care;

32 (C) Carry out the activities of daily living; or

33 (D) Manage his or her resources."

34 SECTION 1-2.

35 Said title is further amended by revising Code Section 16-5-103, relating to exceptions to
36 criminal liability, as follows:

37 "16-5-103.

38 (a) An owner, officer, administrator, board member, employee, or agent of a long-term
39 care facility shall not be held criminally liable for the actions of another person who is
40 convicted pursuant to this article unless such owner, officer, administrator, board member,
41 employee, or agent was a knowing and willful party to or conspirator to the abuse or
42 neglect, as defined in Code Section 30-5-3, or exploitation of a disabled adult, elder person,
43 or resident.

44 (b) A violation of this article shall not give rise to a private cause of action or civil
45 remedies under subsection (b) or (c) of Code Section 16-14-6 against a long-term care
46 facility or any owner, officer, employee, operator, or manager of such facility. Nothing in
47 this subsection shall limit the criminal or civil remedies available to the state pursuant to
48 state law."

49 SECTION 1-3.

50 Said title is further amended by revising Code Section 16-5-104, relating to applicability, and
51 by adding a new Code section to read as follows:

52 "16-5-104.

53 For the purpose of venue under this article, any violation of this article shall be considered
54 to have been committed:

55 (1) In any county in which any act was performed in furtherance of the violation; or

56 (2) In any county in which any alleged victim resides.

16-5-105.

58 This article shall be cumulative and supplemental to any other law of this state."

SECTION 1-4.

60 Said title is further amended in subparagraph (A) of paragraph (9) of Code Section 16-14-3,
61 relating to definitions for the "Georgia RICO (Racketeer Influenced and Corrupt
62 Organizations Act)," by deleting "or" at the end of division (xl), by replacing the period with
63 ";" or" at the end of division (xli), and by adding a new division to read as follows:

"(xlii) Article 8 of Chapter 5 of Title 16, relating to protection of elder persons."

SECTION 1-5.

66 Article 1 of Chapter 8 of Title 17 of the Official Code of Georgia Annotated, relating to
67 general provisions for trial, is amended by revising Code Section 17-8-1, relating to cases to
68 be called in the order in which they stand on docket, as follows:

"17-8-1.

70 (a) The cases on the criminal docket shall be called in the order in which they stand on the
71 docket unless the ~~defendant~~ accused is in jail or, otherwise, in the sound discretion of the
72 court.

(b)(1) As used in this Code section, the terms 'disabled adult' and 'elder person' shall have the same meaning as set forth in Code Section 16-5-100.

(2) When the alleged victim is a disabled adult or elder person, the prosecuting attorney shall notify the accused if it intends to seek preferred scheduling. The notice shall be in writing and shall:

(A) Allege the specific factor or factors that will inhibit a disabled adult from attending or participating in court proceedings if he or she is a disabled adult; or

(B) State the age of the alleged victim if he or she is an elder person.

(3) When notice has been given pursuant to paragraph (2) of this subsection, the court shall set a date for a hearing on the issue within 14 days after the filing of such notice. The court shall consider the matter and if the court determines that preferred scheduling is necessary, the trial shall not be:

(A) Subject to subsection (a) of this Code section; and

(B) Earlier than 30 days from the date of the hearing."

SECTION 1-6.

88 Chapter 5 of Title 30 of the Official Code of Georgia Annotated, relating to protection of
89 disabled adults and elder persons, is amended by revising Code Section 30-5-3, relating to
90 definitions, as follows:

91 "30-5-3.

92 As used in this chapter, the term:

93 (1) 'Abuse' means the willful infliction of physical pain, physical injury, sexual abuse,
94 mental anguish, unreasonable confinement, or the willful deprivation of essential services
95 to a disabled adult or elder person.

96 (2) 'Caretaker' means a person who has the responsibility for the care of a disabled adult
97 or elder person as a result of family relationship, contract, voluntary assumption of that
98 responsibility, or by operation of law.

99 (3) 'Department' means the Department of Human Services.

100 (4) 'Director' means the director of the Division of Aging Services of the Department of
101 Human Services, or the director's designee.

102 (5) 'Disabled adult' means a person 18 years of age or older who is not a resident ~~of a~~
103 ~~long-term care facility, as defined in Article 4 of Chapter 8 of Title 31~~, but who is:

104 (A) Is mentally or physically incapacitated or has;

105 (B) Has Alzheimer's disease, as defined in Code Section 31-8-180, or dementia; or

106 (C) Has dementia, as defined in Code Section 16-5-100.

107 (6) 'Elder person' means a person 65 years of age or older who is not a resident ~~of a~~
108 ~~long-term care facility as defined in Article 4 of Chapter 8 of Title 31.~~

109 (7) 'Essential services' means social, medical, psychiatric, or legal services necessary to
110 safeguard the disabled adult's or elder person's rights and resources and to maintain the
111 physical and mental well-being of such person. These services shall include, but not be
112 limited to, the provision of medical care for physical and mental health needs, assistance
113 in personal hygiene, food, clothing, adequately heated and ventilated shelter, and
114 protection from health and safety hazards but shall not include the taking into physical
115 custody of a disabled adult or elder person without that person's consent.

116 (8) 'Exploitation' means the illegal or improper use of a disabled adult or elder person or
117 that person's resources through undue influence, coercion, harassment, duress, deception,
118 false representation, false pretense, or other similar means for one's own or another's
119 profit or advantage.

120 (9) 'Fiduciary' shall have the same meaning as set forth in Code Section 7-1-4.

121 (10) 'Financial institution' shall have the same meaning as set forth in Code Section
122 7-1-4.

123 (11) 'Investment company' means an individual or a corporation, a partnership, a limited
124 liability corporation, a joint-stock company, a trust, a fund, or any organized group of
125 persons whether incorporated that:

126 (A) Is engaged or proposes to engage in the business of effecting transactions in
127 securities;

128 (B) Is engaged or proposes to engage in the business of issuing securities, or has been
129 engaged in such business and has any certificates outstanding; or
130 (C) Is engaged or holds itself out to be in the business of advising others, either directly
131 or through publications or writings, as to the value of securities or the advisability of
132 investing in, purchasing, or selling securities or that, for compensation and as a part of
133 a regular business, issues or promulgates analysis or reports concerning securities.

134 (12) 'Long-term care facility' shall have the same meaning as set forth in Code Section
135 31-8-81.

136 (13) 'Mentally or physically incapacitated' means an impairment which substantially
137 affects an individual's ability to:

138 (A) Provide personal protection;

139 (B) Provide necessities, including but not limited to food, shelter, clothing, medical,
140 or other health care;

141 (C) Carry out the activities of daily living; or

142 (D) Manage his or her resources.

143 (9)(14) 'Neglect' means the absence or omission of essential services to the degree that
144 it harms or threatens with harm the physical or emotional health of a disabled adult or
145 elder person.

146 (10)(15) 'Protective services' means services necessary to protect a disabled adult or elder
147 person from abuse, neglect, or exploitation. Such services shall include, but not be
148 limited to, evaluation of the need for services and mobilization of essential services on
149 behalf of a disabled adult or elder person.

150 (16) 'Resident' shall have the same meaning as set forth in Code Section 31-8-81.

151 (17) 'Security' shall have the same meaning as set forth in Code Section 10-5-2.

152 (11)(18) 'Sexual abuse' means the coercion for the purpose of self-gratification by a
153 guardian or other person supervising the welfare or having immediate charge, control, or
154 custody of a disabled adult or elder person to engage in any of the following conduct:

155 (A) Lewd exhibition of the genitals or pubic area of any person;

156 (B) Flagellation or torture by or upon a person who is unclothed or partially unclothed;

157 (C) Condition of being fettered, bound, or otherwise physically restrained on the part
158 of a person who is unclothed or partially clothed unless physical restraint is medically
159 indicated;

160 (D) Physical contact in an act of sexual stimulation or gratification with any person's
161 unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

162 (E) Defecation or urination for the purpose of sexual stimulation of the viewer; or

163 (F) Penetration of the vagina or rectum by any object except when done as part of a
164 recognized medical or nursing procedure."

165

SECTION 1-7.

166 Said chapter is further amended by revising subparagraph (a)(1)(B) and subsections (b) and
167 (c) of Code Section 30-5-4, relating to reporting of need for protective services, as follows:

168 "(B) Any employee of a financial institution, ~~as defined in Code Section 7-1-4, or~~ investment company having reasonable cause to believe that a disabled adult or elder
169 person has been exploited shall report or cause reports to be made in accordance with
170 the provisions of this Code section; provided, however, that this obligation shall not
171 apply to any employee of a financial institution or investment company while that
172 employee is acting as a fiduciary, ~~as defined in Code Section 7-1-4,~~ but only for such
173 assets that the employee is holding or managing in a fiduciary capacity."

174 "(b)(1)(A) A report that a disabled adult or elder person ~~who is not a resident of a long-term care facility as defined in Code Section 31-8-81~~ is in need of protective
175 services or has been the victim of abuse, neglect, or exploitation shall be made to an
176 adult protection agency providing protective services as designated by the department
177 and to an appropriate law enforcement agency or prosecuting attorney. If a report of
178 a disabled adult or elder person abuse, neglect, or exploitation is made to an adult
179 protection agency or independently discovered by the agency, then the agency shall
180 immediately ~~notify the appropriate law enforcement agency or prosecuting attorney~~
181 make a reasonable determination based on available information as to whether the
182 incident alleges actions by an individual, other than the disabled adult or elder person,
183 that constitute a crime and include such information in their report. If a crime is
184 suspected, the report shall immediately be forwarded to the appropriate law
185 enforcement agency or prosecuting attorney. During an adult protective agency's
186 investigation, it shall be under a continuing obligation to immediately report the
187 discovery of any evidence that may constitute a crime.

188 (B) If the disabled adult or elder person is a resident of a long-term care facility as
189 ~~defined in Code Section 31-8-81~~ person is 65 years of age or older and is a resident, a
190 report shall be made in accordance with Article 4 of Chapter 8 of Title 31. If a report
191 made in accordance with the provisions of this Code section alleges that the abuse or
192 exploitation occurred within a long-term care facility, such report shall be investigated
193 in accordance with Articles 3 and 4 of Chapter 8 of Title 31.

194 (2) Reporting required by subparagraph (A)(1) of this subsection The report may be
195 made by oral or written communication. Such The report shall include the name and
196 address of the disabled adult or elder person and should include the name and address of
197 the disabled adult's or elder person's caretaker, the age of the disabled adult or elder
198 person, the nature and extent of the disabled adult's or elder person's injury or condition
199 resulting from abuse, exploitation, or neglect, and other pertinent information.

(3) When a report of a disabled adult's or elder person's abuse, neglect, or exploitation is originally reported to All such reports prepared by a law enforcement agency, it shall be forwarded by such agency to the director or his or her designee within 24 hours of receipt.

(c) Anyone who makes a report pursuant to this chapter, who testifies in any judicial proceeding arising from the report, who provides protective services, or who participates in a required investigation under the provisions of this chapter shall be immune from any civil liability or criminal liability prosecution on account of such report or testimony or participation, unless such person acted in bad faith, with a malicious purpose, or was a party to such crime or fraud. Any financial institution, ~~as defined in Code Section 7-1-4 or investment company~~, including without limitation officers and directors thereof, that is an employer of anyone who makes a report pursuant to this chapter in his or her capacity as an employee, or who testifies in any judicial proceeding arising from a report made in his or her capacity as an employee, or who participates in a required investigation under the provisions of this chapter in his or her capacity as an employee, shall be immune from any civil liability or criminal liability prosecution on account of such report or testimony or participation of its employee, unless such financial institution ~~or investment company~~ knew or should have known that the employee acted in bad faith or with a malicious purpose and failed to take reasonable and available measures to prevent such employee from acting in bad faith or with a malicious purpose. The immunity described in this subsection shall apply not only with respect to the acts of making a report, testifying in a judicial proceeding arising from a report, providing protective services, or participating in a required investigation but also shall apply with respect to the content of the information communicated in such acts."

SECTION 1-8.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising paragraph (2) of subsection (a) of Code Section 31-2-9, relating to record check requirements for certain facilities, as follows:

"(2) 'Crime' means commission of the following offenses:

- (A) A violation of Code Section 16-5-1;
 - (B) A violation of Code Section 16-5-21, relating to aggravated assault;
 - (C) A violation of Code Section 16-5-24, relating to aggravated battery;
 - (D) A violation of Code Section 16-5-70, relating to cruelty to children;
 - (E) A violation of Article 8 of Chapter 5 of Title 16;
 - (F) A violation of Code Section 16-6-1, relating to rape;
 - (G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

238 (H) A violation of Code Section 16-6-4, relating to child molestation;
239 (I) A violation of Code Section 16-6-5, relating to enticing a child for indecent
240 purposes;
241 (J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in
242 custody, detained persons, or patients in hospitals or other institutions;
243 (K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;
244 (L) A violation of Code Section 16-8-41;
245 (M) A felony violation of Code Section 31-7-12.1;
246 (M)(N) Any other offense committed in another jurisdiction that, if committed in this
247 state, would be deemed to be a crime listed in this paragraph without regard to its
248 designation elsewhere; or
249 (N)(O) Any other criminal offense as determined by the department and established
250 by rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative
251 Procedure Act,' that would indicate the unfitness of an individual to provide care to or
252 be in contact with persons residing in a facility."

SECTION 1-9.

253 Said title is further amended by adding a new Code section to read as follows:
254 "31-2-13.
255 (a) As used in this Code section, the term 'commissioner' means the commissioner of
256 community health or his or her designee.
257 (b) Nothing in this Code section shall be construed to require an inspection warrant when
258 a warrantless inspection is authorized by law or pursuant to a rule or regulation enacted
259 pursuant to this title.
260 (c) An inspection warrant is an order, in writing, signed by a judicial officer, directed to
261 the commissioner or any person authorized to make inspections for such commissioner and
262 commanding him or her to conduct an inspection required or authorized by:
263 (1) This title;
264 (2) Any other law administered by the commissioner;
265 (3) Rules or regulations promulgated pursuant to this title; or
266 (4) Rules or regulations promulgated pursuant to any other law administered by the
267 commissioner.
268 (d) The commissioner or any person authorized to make inspections for such
269 commissioner shall make application for an inspection warrant to a person who is a judicial
270 officer within the meaning of Code Section 17-5-21.
271 (e)(1) An inspection warrant shall be issued only upon cause and when supported by an
272 affidavit which:

274 (A) Particularly describes the place, dwelling, structure, premises, or vehicle to be
275 inspected;

276 (B) Particularly describes the purpose for which the inspection is to be made; and

277 (C) Contains either a statement that consent to inspect has been sought and refused or
278 facts or circumstances reasonably justifying the failure to seek such consent.

279 (2) Cause to support the issuance of an inspection warrant shall be deemed to exist if:

280 (A) Reasonable legislative or administrative standards for conducting a routine or area
281 inspection are satisfied with respect to the particular place, dwelling, structure,
282 premises, or vehicle; or

283 (B) There is reason to believe that a condition of nonconformity exists with respect to
284 the particular place, dwelling, structure, premises, or vehicle.

285 (f) An inspection warrant shall be effective for the time specified therein, but not for a
286 period of more than 14 days, unless extended or renewed by the judicial officer who signed
287 and issued the original warrant, upon satisfaction that such extension or renewal is in the
288 public interest. Such inspection warrant shall be executed and returned to the judicial
289 officer by whom it was issued within the time specified in such warrant or within the
290 extended or renewed time. After the expiration of such time, the inspection warrant, unless
291 executed, shall be void.

292 (g) An inspection pursuant to an inspection warrant:

293 (1) May be executed at any time as deemed appropriate by the individual executing such
294 warrant but whenever possible shall be made at any time during operating or regular
295 business hours;

296 (2) Should not be performed in the absence of an owner or occupant of the particular
297 place, dwelling, structure, premises, or vehicle being inspected unless specifically
298 authorized by the judicial officer upon a showing that such authority is reasonably
299 necessary to effectuate the purpose of the law, rule, or regulation being enforced; and

300 (3) Shall not be made by means of forcible entry, except that the judicial officer may
301 expressly authorize a forcible entry when facts are shown:

302 (A) Which are sufficient to create a reasonable suspicion of a violation of this title or
303 any other law, rule, or regulation administered by the commissioner or the department,
304 which, if such violation existed, would be an immediate threat to health or safety; or

305 (B) Establishing that a reasonable attempt to serve a previous inspection warrant has
306 been unsuccessful.

307 (h) When prior consent for an inspection has been sought and refused and an investigation
308 warrant has been issued, an inspection warrant may be executed without further notice to
309 the owner or occupant of the particular place, dwelling, structure, premises, or vehicle
310 being inspected.

311 (i) It shall be unlawful for any owner, operator, or employee of the particular place,
312 dwelling, structure, premises, or vehicle being inspected to refuse to allow an inspection
313 pursuant to an inspection warrant issued as provided in this Code section. Any person
314 violating this Code section shall be guilty of a misdemeanor."

SECTION 1-10.

316 Chapter 5 of Title 31 of the Official Code of Georgia Annotated, relating to administration
317 and enforcement, is amended by revising subsection (b) of Code Section 31-5-10, relating
318 to notifying department or board of health of conditions on private property which are
319 injurious to the public and inspection warrants, as follows:

320 "(b) Any person who knows or suspects that a condition exists on private property, which
321 condition is injurious to the public health, safety, or comfort, shall immediately notify the
322 department Department of Public Health or the county board of health. Upon receiving
323 such notice, the department or the county board of health shall be authorized to obtain an
324 inspection warrant as provided in Code Section 31-5-21. If the department or the county
325 board of health determines that there exists a condition which is injurious to the public
326 health, safety, or comfort, the department or county board of health shall, by registered or
327 certified mail or statutory overnight delivery with return receipt requested, notify the
328 occupants of the property and, if different from the occupant, the person, firm, or
329 corporation which owns the property. Notice to the owner shall be sent to the address
330 shown on the county or municipal property tax records."

SECTION 1-11.

332 Said title is further amended by revising Code Section 31-5-20, relating to "inspection
333 warrant" defined, as follows:

334 "31-5-20.

335 As used in this chapter article, the term 'inspection warrant' means a warrant authorizing
336 a search or inspection of private property where such a search or inspection is one that is
337 necessary for the enforcement of any of the provisions of laws authorizing licensure,
338 inspection, or regulation by the Department of Public Health or a local agency thereof **or**
339 ~~by the Department of Community Health."~~

SECTION 1-12.

341 Said title is further amended by revising Code Section 31-5-21, relating to persons who may
342 obtain inspection warrants, as follows:

343 "31-5-21.

344 The commissioner or the commissioner of community of public health or his or her
345 delegate or the director of any county board of health, in addition to other procedures now
346 or hereafter provided, may obtain an inspection warrant under the conditions specified in
347 this chapter. Such warrant shall authorize the commissioner or the commissioner of
348 community public health or the director of any county board of health, or the agents of any,
349 or the Department of Agriculture, as appropriate, to conduct a search or inspection of
350 property, either with or without the consent of the person whose property is to be searched
351 or inspected, if such search or inspection is one that is elsewhere authorized under the rules
352 and regulations duly promulgated under this title or any provision of law which authorizes
353 licensure, inspection, or regulation by the Department of Public Health or a local agency
354 thereof or by the Department of Community Health."

355 **SECTION 1-13.**

356 Said title is further amended by revising Code Section 31-5-24, relating to excluding
357 evidence, as follows:

358 "31-5-24.

359 No facts discovered or evidence obtained in an inspection conducted under authority of an
360 inspection warrant issued pursuant to this chapter shall be competent as evidence in any
361 criminal proceeding against any party."

362 **PART IA**

363 **SECTION 1A-1.**

364 Code Section 24-12-21 of the Official Code of Georgia Annotated, relating to disclosure of
365 AIDS confidential information, is amended in paragraph (1) of subsection (s) by deleting
366 "or" at the end of subparagraph (A) and adding a new subparagraph (C) to read as follows:

367 "(C) Is suspected of being mentally ill and is the subject of an order issued pursuant to
368 Code Section 37-3-41 when the court issuing such order finds in an in camera hearing
369 by clear and convincing evidence a compelling need for the information which cannot
370 be accommodated by other means. In assessing compelling need, the court shall weigh
371 the public health, safety, or welfare needs or any other public or private need for the
372 disclosure against the privacy interest of the person identified by the information and
373 the public interest which may be disserved by disclosures which may deter voluntary
374 HIV tests. If the court determines that disclosure of that information is authorized
375 under this subparagraph, the court shall order that disclosure and impose appropriate

safeguards against any unauthorized disclosure. The records of that hearing otherwise
shall be under seal; or"

PART II

SECTION 2-1.

380 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general
381 provisions relative to torts, is amended by revising Code Section 51-1-29, relating to liability
382 of persons rendering emergency care, as follows:

383 "51-1-29.

384 (a) Any person, including any person licensed to practice medicine and surgery pursuant
385 to Article 2 of Chapter 34 of Title 43 and including any person licensed to render services
386 ancillary thereto, who in good faith renders emergency care at the scene of an accident or
387 emergency to the victim or victims thereof without making any charge therefor shall not
388 be liable for any civil damages as a result of any act or omission by such person in
389 rendering emergency care or as a result of any act or failure to act to provide or arrange for
390 further medical treatment or care for the injured person.

391 (b) As used in this Code section, the term 'emergency care' shall include, but shall not be
392 limited to, the rescue or attempted rescue of an incapacitated or endangered individual from
393 a locked motor vehicle."

SECTION 2-2.

395 Code Section 16-3-20 of the Official Code of Georgia Annotated, relating to justification,
396 is amended by revising paragraph (5) as follows:

397 "(5) When the person's conduct is justified for any other reason under the laws of this
398 state, including as provided in Code Section 51-1-29; or"

PART III

SECTION 3-1.

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