

House Bill 72

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
4 expand and clarify protection of disabled adults and elder persons; to provide for and revise
5 definitions; to provide for venue; to provide for abuse, neglect, and exploitation of disabled
6 adults, elder persons, and residents as a racketeering activity; to provide for priority
7 scheduling of cases when the alleged victim is a disabled adult or elder person; to change
8 provisions relating to reporting abuse, neglect, and exploitation of disabled adults and elder
9 persons; to change provisions relating to inspection of premises pursuant to inspection
10 warrants; to repeal provisions relating to exclusion of evidence obtained during the execution
11 of an inspection warrant; to provide for related matters; to repeal conflicting laws; and for
12 other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

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

18 "(7.1) 'Mentally or physically incapacitated' means an impairment which substantially
19 affects an individual's ability to:

20 (A) Provide personal protection;

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

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

24 (D) Manage his or her resources."

25 **SECTION 2.**

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

28 "16-5-104.

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

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

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

33 16-5-105.

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

35 **SECTION 3.**

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

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

41 **SECTION 4.**

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

45 "17-8-1.

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

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

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

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

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

57 (3) When notice has been given pursuant to paragraph (2) of this subsection, the court
58 shall set a date for a hearing on the issue within 14 days after the filing of such notice.

59 The court shall consider the matter and if the court determines that preferred scheduling
 60 is necessary, the trial shall not be:
 61 (A) Subject to subsection (a) of this Code section; and
 62 (B) Earlier than 30 days from the date of the hearing."

63 **SECTION 5.**

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

67 "30-5-3.

68 As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

92 (8) 'Exploitation' means the illegal or improper use of a disabled adult or elder person or
 93 that person's resources through undue influence, coercion, harassment, duress, deception,

94 false representation, false pretense, or other similar means for one's own or another's
95 profit or advantage.

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

97 (10) 'Financial institution' shall have the same meaning as set forth in Code Section
98 7-1-4.

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

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

104 (B) Is engaged or proposes to engage in the business of issuing securities, or has been
105 engaged in such business and has any certificates outstanding; or

106 (C) Is engaged or holds itself out to be in the business of advising others, either directly
107 or through publications or writings, as to the value of securities or the advisability of
108 investing in, purchasing, or selling securities or that, for compensation and as a part of
109 a regular business, issues or promulgates analysis or reports concerning securities.

110 (12) 'Long-term care facility' shall have the same meaning as set forth in Code Section
111 31-8-81.

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

114 (A) Provide personal protection;

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

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

118 (D) Manage his or her resources.

119 ~~(9)~~(14) 'Neglect' means the absence or omission of essential services to the degree that
120 it harms or threatens with harm the physical or emotional health of a disabled adult or
121 elder person.

122 ~~(10)~~(15) 'Protective services' means services necessary to protect a disabled adult or elder
123 person from abuse, neglect, or exploitation. Such services shall include, but not be
124 limited to, evaluation of the need for services and mobilization of essential services on
125 behalf of a disabled adult or elder person.

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

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

128 ~~(11)~~(18) 'Sexual abuse' means the coercion for the purpose of self-gratification by a
129 guardian or other person supervising the welfare or having immediate charge, control, or
130 custody of a disabled adult or elder person to engage in any of the following conduct:

- 131 (A) Lewd exhibition of the genitals or pubic area of any person;
- 132 (B) Flagellation or torture by or upon a person who is unclothed or partially unclothed;
- 133 (C) Condition of being fettered, bound, or otherwise physically restrained on the part
- 134 of a person who is unclothed or partially clothed unless physical restraint is medically
- 135 indicated;
- 136 (D) Physical contact in an act of sexual stimulation or gratification with any person's
- 137 unclothed genitals, pubic area, or buttocks or with a female's nude breasts;
- 138 (E) Defecation or urination for the purpose of sexual stimulation of the viewer; or
- 139 (F) Penetration of the vagina or rectum by any object except when done as part of a
- 140 recognized medical or nursing procedure."

141 **SECTION 6.**

142 Said chapter is further amended by revising subparagraph (a)(1)(B) and subsections (b) and

143 (c) of Code Section 30-5-4, relating to reporting of need for protective services, as follows:

144 "(B) Any employee of a financial institution, ~~as defined in Code Section 7-1-4, or~~

145 investment company having reasonable cause to believe that a disabled adult or elder

146 person has been exploited shall report or cause reports to be made in accordance with

147 the provisions of this Code section; provided, however, that this obligation shall not

148 apply to any employee of a financial institution or investment company while that

149 employee is acting as a fiduciary, ~~as defined in Code Section 7-1-4,~~ but only for such

150 assets that the employee is holding or managing in a fiduciary capacity."

151 "(b)(1)(A) A report that a disabled adult or elder person ~~who is not a resident of a~~

152 ~~long-term care facility as defined in Code Section 31-8-81~~ is in need of protective

153 services or has been the victim of abuse, neglect, or exploitation shall be made to an

154 adult protection agency providing protective services as designated by the department

155 and to an appropriate law enforcement agency or prosecuting attorney. If a report of

156 a disabled adult or elder person abuse, neglect, or exploitation is made to an adult

157 protection agency or independently discovered by the agency, then the agency shall

158 ~~immediately notify the appropriate law enforcement agency or prosecuting attorney~~

159 make a reasonable determination based on available information as to whether the

160 incident alleges actions by an individual, other than the disabled adult or elder person,

161 that constitute a crime and include such information in their report. If a crime is

162 suspected, the report shall immediately be forwarded to the appropriate law

163 enforcement agency or prosecuting attorney. During an adult protective agency's

164 investigation, it shall be under a continuing obligation to immediately report the

165 discovery of any evidence that may constitute a crime.

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

172 (2) Reporting required by subparagraph (A)(1) of this subsection ~~The report~~ may be
 173 made by oral or written communication. Such ~~The~~ report shall include the name and
 174 address of the disabled adult or elder person and should include the name and address of
 175 the disabled adult's or elder person's caretaker, the age of the disabled adult or elder
 176 person, the nature and extent of the disabled adult's or elder person's injury or condition
 177 resulting from abuse, exploitation, or neglect, and other pertinent information.

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

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

202 **SECTION 7.**

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

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

207 (A) A violation of Code Section 16-5-1;

208 (B) A violation of Code Section 16-5-21, ~~relating to aggravated assault;~~

209 (C) A violation of Code Section 16-5-24, ~~relating to aggravated battery;~~

210 (D) A violation of Code Section 16-5-70, ~~relating to cruelty to children;~~

211 (E) A violation of Article 8 of Chapter 5 of Title 16;

212 (F) A violation of Code Section 16-6-1, ~~relating to rape;~~

213 (G) A violation of Code Section 16-6-2, ~~relating to aggravated sodomy;~~

214 (H) A violation of Code Section 16-6-4, ~~relating to child molestation;~~

215 (I) A violation of Code Section 16-6-5, ~~relating to enticing a child for indecent~~
 216 ~~purposes;~~

217 (J) A violation of Code Section 16-6-5.1, ~~relating to sexual assault against persons in~~
 218 ~~custody, detained persons, or patients in hospitals or other institutions;~~

219 (K) A violation of Code Section 16-6-22.2, ~~relating to aggravated sexual battery;~~

220 (L) A violation of Code Section 16-8-41;

221 (M) A felony violation of Code Section 31-7-12.1;

222 ~~(M)(N)~~ Any other offense committed in another jurisdiction that, if committed in this
 223 state, would be deemed to be a crime listed in this paragraph without regard to its
 224 designation elsewhere; or

225 ~~(N)(O)~~ Any other criminal offense as determined by the department and established
 226 by rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative
 227 Procedure Act,' that would indicate the unfitness of an individual to provide care to or
 228 be in contact with persons residing in a facility."

229 **SECTION 8.**

230 Said title is further amended by adding a new Code section to read as follows:

231 "31-2-13.

232 (a) As used in this Code section, the term 'commissioner' means the commissioner of
 233 community health or his or her designee.

234 (b) Nothing in this Code section shall be construed to require an inspection warrant when
 235 a warrantless inspection is authorized by law or pursuant to a rule or regulation enacted
 236 pursuant to this title.

237 (c) An inspection warrant is an order, in writing, signed by a judicial officer, directed to
 238 the commissioner or any person authorized to make inspections for such commissioner and
 239 commanding him or her to conduct an inspection required or authorized by:

240 (1) This title;

241 (2) Any other law administered by the commissioner;

242 (3) Rules or regulations promulgated pursuant to this title; or

243 (4) Rules or regulations promulgated pursuant to any other law administered by the
 244 commissioner.

245 (d) The commissioner or any person authorized to make inspections for such
 246 commissioner shall make application for an inspection warrant to a person who is a judicial
 247 officer within the meaning of Code Section 17-5-21.

248 (e)(1) An inspection warrant shall be issued only upon cause and when supported by an
 249 affidavit which:

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

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

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

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

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

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

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

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

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

272 (2) Should not be performed in the absence of an owner or occupant of the particular
 273 place, dwelling, structure, premises, or vehicle being inspected unless specifically

274 authorized by the judicial officer upon a showing that such authority is reasonably
 275 necessary to effectuate the purpose of the law, rule, or regulation being enforced; and
 276 (3) Shall not be made by means of forcible entry, except that the judicial officer may
 277 expressly authorize a forcible entry when facts are shown:
 278 (A) Which are sufficient to create a reasonable suspicion of a violation of this title or
 279 any other law, rule, or regulation administered by the commissioner or the department,
 280 which, if such violation existed, would be an immediate threat to health or safety; or
 281 (B) Establishing that a reasonable attempt to serve a previous inspection warrant has
 282 been unsuccessful.
 283 (h) When prior consent for an inspection has been sought and refused and an investigation
 284 warrant has been issued, an inspection warrant may be executed without further notice to
 285 the owner or occupant of the particular place, dwelling, structure, premises, or vehicle
 286 being inspected.
 287 (i) It shall be unlawful for any owner, operator, or employee of the particular place,
 288 dwelling, structure, premises, or vehicle being inspected to refuse to allow an inspection
 289 pursuant to an inspection warrant issued as provided in this Code section. Any person
 290 violating this Code section shall be guilty of a misdemeanor."

291 **SECTION 9.**

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

296 "(b) Any person who knows or suspects that a condition exists on private property, which
 297 condition is injurious to the public health, safety, or comfort, shall immediately notify the
 298 ~~department~~ Department of Public Health or the county board of health. Upon receiving
 299 such notice, the department or the county board of health shall be authorized to obtain an
 300 inspection warrant as provided in Code Section 31-5-21. If the department or the county
 301 board of health determines that there exists a condition which is injurious to the public
 302 health, safety, or comfort, the department or county board of health shall, by registered or
 303 certified mail or statutory overnight delivery with return receipt requested, notify the
 304 occupants of the property and, if different from the occupant, the person, firm, or
 305 corporation which owns the property. Notice to the owner shall be sent to the address
 306 shown on the county or municipal property tax records."

307 **SECTION 10.**

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

310 "31-5-20.

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

316 **SECTION 11.**

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

319 "31-5-21.

320 The commissioner ~~or the commissioner of community~~ of public health or his or her
321 delegate or the director of any county board of health, in addition to other procedures now
322 or hereafter provided, may obtain an inspection warrant under the conditions specified in
323 this chapter. Such warrant shall authorize the commissioner ~~or the commissioner of~~
324 ~~community~~ public health or the director of any county board of health, or the agents of any,
325 or the Department of Agriculture, as appropriate, to conduct a search or inspection of
326 property, either with or without the consent of the person whose property is to be searched
327 or inspected, if such search or inspection is one that is elsewhere authorized under the rules
328 and regulations duly promulgated under this title or any provision of law which authorizes
329 licensure, inspection, or regulation by the Department of Public Health or a local agency
330 thereof ~~or by the Department of Community Health."~~

331 **SECTION 12.**

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

334 "31-5-24.

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

338 **SECTION 13.**

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