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HB 803 - Crimes and Offenses


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CRIMES AND OFFENSES

Crimes Against the Person: Amend Article 8 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, Relating to Protection of Elder Persons, so as to Prohibit Trafficking a Disabled Adult, Elder Person, or Resident; Provide for Definitions, Provide for Elements of the Crime; Provide for Punishment; Provide for Related Matters; Repeal Conflicting Laws; And for Other Purposes

CODE SECTIONS:	O.C.G.A. § 16-5-102.1 (amended)
BILL NUMBER:	HB 803
ACT NUMBER:	419
GEORGIA LAWS:	2018 Ga. Laws 608
SUMMARY:	The Act criminalizes the trafficking of elders, disabled adults, and residents for the purpose of appropriating their resources, such as Social Security and disability benefits. According to the Act, this conduct constitutes a felony and those convicted could serve up to twenty years in prison or receive a fine of up to \$100,000, or both. The Act defines relevant terms, exempts physicians and other health care providers who act pursuant to lawful authorization, and repeals all conflicting laws.
EFFECTIVE DATE:	July 1, 2018

History

With the elderly population in Georgia quickly growing, the need to protect those among the State's most vulnerable rises.¹ Since 2010,

1. See Craig Schneider, *As Georgia Ages, Shortage of Docs for Seniors*, ATLANTA J. CONST. (Dec. 3, 2016, 12:00 AM), <https://www.myajc.com/news/local/georgia-ages-shortage-docs-for-seniors/OM3ppjoUPNIL0mC45nflrO/> [<https://perma.cc/DLX6-YEXP>] (“[I]n metro Atlanta, a place

more than 3,000 people have been charged with crimes against elders in Georgia.² Media attention surrounding elder abuse ramped up in the wake of the 2017–2018 Georgia General Assembly’s legislation session.³ For example, public outcries for elder abuse registries increased.⁴ A registry would make citizens aware of the nursing homes found guilty of elder abuse, similar to a sex offender registry. Although the General Assembly did not address the registry issue in the 2017–2018 legislative session, it substantively addressed another important issue.

Although Georgia is one of the leading states pushing legislation to protect the elderly population, the Georgia Code fails to address an emerging epidemic.⁵ Article 8 of Chapter 5 of Title 16 in the Official Code of Georgia Annotated lays out the criminal provisions related to protection of elder persons.⁶ Georgia Code section 16-5-102 punishes those who exploit, threaten, intimidate, or attempt to intimidate elderly persons or disabled adults.⁷ The statute imposes a penalty of up to twenty years in prison or a \$50,000 fine, or both.⁸ Prior to House Bill (HB) 803, this Code section was the only law related to protecting elders and disabled persons from abuse and fraudulent

generally known for young people and families, the older adult population of people above the age of 60 doubled between 1970 to 2000. It doubled again between 2000 [and] 2015, according to the Atlanta Regional Commission.”).

2. Sandy Hodson, *Bills Raising Protections for Elderly, Disabled Adults Approved*, AUGUSTA CHRON. (Mar. 30, 2018, 9:51 PM), <http://www.augustachronicle.com/news/20180330/bills-raising-protections-for-elderly-disabled-adults-approved> [<https://perma.cc/ENR9-DNPU>].

3. *See, e.g., id.*

4. *See* J.D. Capelouto, *Elder Abuse: Prosecutions Rise Under New State Law*, ATLANTA J. CONST. (June 29, 2017, 2:20 PM), <https://www.myajc.com/news/elder-abuse-prosecutions-rise-under-new-state-law/uTWFsuvqVBVwsKKsTgIttL/> [<https://perma.cc/YK2K-4S7F>] (“Despite a new statewide focus on the issue, Georgia has no elder abuse registry, unlike Tennessee and New Hampshire, two leading states in addressing elder abuse. An elder abuse registry would work similarly to how child and sexual abuse registries work, according to abuse experts who have been advocating for one.”).

5. Video Recording of House Judiciary Non-Civil Committee Meeting at 8 min., 20 sec. (Feb. 21, 2018) (remarks by Rep. Wendell Willard (R-51st)), <https://livestream.com/accounts/19771794/events/7993570/videos/170534174> [<https://perma.cc/S2Y7-A4AZ>] [hereinafter House Committee Video]; Video Recording of Senate Health and Human Services Committee Meeting at 3 min., 50 sec. (Mar. 20, 2018) (remarks by Rep. Willard (R-51st)), <https://livestream.com/accounts/25225476/events/7946812/videos/172003562> [<https://perma.cc/TT5F-JSXX>] [hereinafter Senate Committee Video].

6. *See generally* O.C.G.A. §§ 16-5-100 to -05 (2018).

7. *See generally* O.C.G.A. § 16-5-102 (2018).

8. O.C.G.A. § 16-5-102(a) (2018).

activity. However, the law fails to encompass all forms of crimes surrounding the elderly and disabled.

In 2015, the Georgia Bureau of Investigation (GBI) hired eight new agents to work with a task force under its Investigative Division.⁹ The task force travels around the state to train law enforcement officers to identify elder abuse and exploitation.¹⁰ The results have been favorable, leading to more elder abuse-related arrests.¹¹ The GBI was concerned about people locking away the elderly and disabled citizens for whom they are responsible and collecting Social Security and disability benefits for themselves.¹² According to sponsors of the bill, a “criminal enterprise” operating in Georgia recruits vulnerable elderly and disabled people and “warehouse” them to steal their benefits.¹³

Traffickers particularly pinpoint those who lack the capacity to speak up for themselves and have no family to ensure their safety.¹⁴ The enterprise goes so far as to target veterans for the purpose of appropriating military retirement pay.¹⁵ The GBI has also caught traffickers with medical prescriptions which were filled using victims’ names and personal information.¹⁶ The traffickers would deprive their victims of much-needed medication and sell it instead.¹⁷ Often, the victims received inadequate food or water and lived in unsatisfactory conditions.¹⁸ When law enforcement would close in on the perpetrators, they simply moved the abused individuals to a new county or home to avoid detection.¹⁹

The GBI discovered a need for a system to catch people who navigate from place to place in an effort to avoid criminal exposure.²⁰

9. Capelouto, *supra* note 4.

10. *Id.*

11. *Id.* (“The GBI has seen results: Over a six-year period, the number of charges per year issued against Georgians for crimes against elderly people more than quintupled—366 charges were issued in 2010, while 2016 saw 2,082 charges, according to data provided by the GBI.”).

12. *See* Senate Committee Video, *supra* note 5, at 6 min., 45 sec. (remarks by GBI Dir. Vernon Keenan).

13. *Id.*

14. *Id.* at 11 min., 5 sec. (remarks by Asst. District Attorney Jason Marbutt).

15. *Id.* at 7 min., 18 sec. (remarks by GBI Dir. Vernon Keenan).

16. *Id.* at 9 min. 7 sec. (remarks by GBI Dir. Vernon Keenan).

17. *Id.*

18. House Committee Video, *supra* note 5; Senate Committee Video, *supra* note 5.

19. Senate Committee Video, *supra* note 5, at 7 min., 40 sec. (remarks by GBI Dir. Vernon Keenan).

20. *See id.* at 4 min., 20 sec. (remarks by Rep. Wendell Willard (R-51st)) (“So they need us to have

To jumpstart necessary legislation, the Director of the GBI, Vernon Keenan, brought the issue to the attention of the Chairman of the Georgia House of Representatives Judiciary Committee, Representative Wendell Willard (R-51st). HB 803 seeks to contribute to the fight against this niche sector of criminal conduct by providing law enforcement and prosecutors a tool to punish traffickers that did not exist before, further protecting the State's vulnerable citizens.²¹

Bill Tracking of HB 803

Consideration and Passage by the House

Representative Wendell Willard (R-51st) wrote HB 803 and served as its primary sponsor in the House.²² His co-sponsors in the House included Representatives Sharon Cooper (R-43rd), Clay Cox (R-108th), Eddie Lumsden (R-12th), Ed Rynders (R-152nd), and Sheila Nelson (D-125th).²³ The House read the bill for the first time on February 1, 2018, and for the second time on February 5, 2018.²⁴ The Speaker of the House, Representative David Ralston (R-7th) committed the bill to the Judiciary Non-Civil Committee.²⁵ On February 21, 2018, the House Committee met to discuss the bill at which time Representative Willard voiced his support for the bill.²⁶ The Committee amended the bill in part and favorably reported the bill by Committee substitute on February 22, 2018.²⁷

further legislation . . . that will in effect give the tool that's necessary for law enforcement to stop this type of conduct.").

21. See Georgia General Assembly, HB 635, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20172018/HB/635> [<https://perma.cc/45B5-8WNB>]. Gov. Nathan Deal (R) signed House Bill 635 on May 7, 2018. *Id.* The bill, sponsored by Rep. Sharon Cooper (R-43rd), later became Act 418, which provides for the establishment of at-risk adult protective investigative teams to coordinate investigations of and responses to suspected instances of abuse, neglect, or exploitation of disabled adults or elder persons. *Id.*; see also Senate Committee Video, *supra* note 5, at 4 min., 20 sec. and 5 min., 25 sec. (remarks by Rep. Wendell Willard (R-51st)).

22. Georgia General Assembly, HB 803, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/Display/20172018/HB/803> [<https://perma.cc/N25E-NZUG>] [hereinafter HB 803 Bill Tracking].

23. *Id.*

24. State of Georgia Final Composite Status Sheet, HB 803, May 10, 2018.

25. *Id.*

26. See generally House Committee Video, *supra* note 5.

27. State of Georgia Final Composite Status Sheet, HB 803, May 10, 2018.

In its amendment, the Committee created an exception for health care providers acting under the guidance of a physician, adding subsection (f) to Section 1.²⁸ The Committee substitute also changed the bill's sentencing structure in subsection (c) of Section 1, eliminating the mandatory minimum language and tiered-punishment system.²⁹ Representative Willard's initial version of the bill had tiers of sentencing based on the number of victims and a five-year minimum prison sentence.³⁰ On behalf of the Committee, the Vice Chairman of the Judiciary Non-Civil Committee, Representative Bert Reeves (R-34th), justified the changes to the bill by citing the difficulties of passing legislation with tiered sentencing provisions.³¹ In addition, the Committee wanted to give judges more discretion in imposing sentences, while still allowing for harsh punishment under egregious circumstances.³²

During the meeting, Chairman of the Judiciary Non-Civil Committee, Representative Rich Golick (R-40th), took issue with the word "trafficking," believing that it did not live up to the same meaning as its meaning in other criminal provisions.³³ He interpreted the bill to criminalize conduct more likened to fraud.³⁴ After no further concerns, remarks, or amendments, the Committee voted to pass the bill.³⁵ On February 28, 2018, the House read the bill for a third time.³⁶ After this final reading, the House passed and adopted the Committee substitute of HB 803 by a vote of 165 to 1.³⁷

28. See HB 803 (HCS), 2018 Ga. Gen. Assemb.; see also House Committee Video, *supra* note 5, at 13 min., 9 sec. (remarks by Rep. Bert Reeves (R-34th)).

29. Compare HB 803, as introduced, § 1, pp. 2–3, ll. 55–75, 2018 Ga. Gen. Assemb., with HB 803 (HCS), § 1, p. 2, ll. 55–57, 2018 Ga. Gen. Assemb.; see also House Committee Video, *supra* note 5.

30. See HB 803, as introduced, § 1, pp. 2–3, ll. 55–75, 2018 Ga. Gen. Assemb.

31. House Committee Video, *supra* note 5.

32. *Id.*

33. *Id.* at 14 min., 53 sec. (remarks by Rep. Rich Golick (R-40th)).

34. *Id.* at 15 min., 21 sec. (remarks by Rep. Rich Golick (R-40th)).

35. *Id.* at 15 min., 57 sec. (remarks by Rep. Rich Golick (R-40th)); State of Georgia Final Composite Status Sheet, HB 803, May 10, 2018.

36. State of Georgia Final Composite Status Sheet, HB 803, May 10, 2018.

37. HB 803 Bill Tracking, *supra* note 22.

Consideration and Passage by the Senate

Senator Kay Kirkpatrick (R-32nd) sponsored HB 803 in the Senate.³⁸ On March 1, 2018, the Senate read the bill for the first time and referred it to the Health and Human Services Committee.³⁹ On March 20, 2018, the Senate Health and Human Services Committee met to discuss the bill.⁴⁰ Representative Willard spoke on the bill's behalf.⁴¹ GBI Director Vernon Keenan and Chairman of the North Georgia/Cobb Elder Abuse Task Force Jason Marbutt made remarks from the law enforcement and prosecutorial perspective in support of the bill.⁴² Others, who could not speak due to time limits, attended the meeting in support of the bill.⁴³ However, their remarks were included in the meeting's minutes.⁴⁴ With no amendments or additions, the Committee voted in favor of a motion to pass the bill.⁴⁵

On March 21, 2018, the Committee favorably reported the bill to the Senate.⁴⁶ That same day, the Senate read the bill for a second time.⁴⁷ On March 27, 2018, the Senate read the bill for a third time and passed the bill, by unanimous vote.⁴⁸ The House sent the bill to Governor Nathan Deal (R) on April 3, 2018.⁴⁹ Governor Deal signed the bill into law over a month later on May 7, 2018, transmitting it into Act 419.⁵⁰ The Act became effective July 1, 2018.⁵¹

38. *Id.*

39. State of Georgia Final Composite Status Sheet, HB 803, May 10, 2018.

40. *See generally* Senate Committee Video, *supra* note 5, at 1 min., 24 sec. (remarks by Sen. Renee Unterman (R-45th)).

41. *See generally id.*

42. *See generally id.* at 9 min., 7 sec. (remarks by GBI Dir. Vernon Keenan); *id.* at 10 min., 5 sec. (remarks by Asst. District Attorney Jason Marbutt).

43. *Id.* at 12 min., 28 sec. (remarks by Sen. Renee Unterman (R-45th)).

44. *Id.*

45. Senate Committee Video, *supra* note 5, at 11 min., 54 sec. (remarks by Sen. Renee Unterman (R-45th)); State of Georgia Final Composite Status Sheet, HB 803, May 10, 2018.

46. State of Georgia Final Composite Status Sheet, HB 803, May 10, 2018.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. HB 803 Bill Tracking, *supra* note 22.

The Act

The Act amends Article 8 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated.⁵² The overall purpose of the Act is to “prohibit the trafficking of disabled adults, elder persons, or residents and to provide for penalties for those who are found in violation.”⁵³

Section 1 of the Act adds Code section 16-5-102.1 to Article 8 of Chapter 5 of Title 16.⁵⁴ The Act maintains all of the original language of the other Code sections, and it repeals all laws in conflict with the Act in Section 2.⁵⁵ The new language in Code section 16-5-102.1 provides definitions of terms used throughout the section; defines the offense of trafficking disabled adults, elder persons, or residents; provides the penalties for violations; and defines exemptions from the rule.⁵⁶

Section 1
Definitions

Section 1 begins by defining the terms used throughout the section in subsection (a)(1) by providing different scenarios that would be considered “coercion” under the law.⁵⁷ Subsections (a)(1)(A) through (E) provide five separate instances where a court should find that a party has coerced a disabled adult, elder person, or resident under the new Code.⁵⁸ Subsection (a)(1)(A) states that any causing or threatening of bodily harm, physical restraint or confinement, or threats to physically restrain or confine these groups of citizens will constitute coercion.⁵⁹ Subsection (a)(2) provides that “controlled substance” will maintain the same meaning that was set forth in Code section 16-13-21.⁶⁰

52. 2018 Ga. Laws 608.

53. *Id.*

54. 2018 Ga. Laws 608, § 1, at 609–10.

55. 2018 Ga. Laws 608, §§ 1–2, at 609–10.

56. O.C.G.A. § 16-5-102.1 (2018).

57. 2018 Ga. Laws 608, § 1, at 609.

58. *Id.*

59. *Id.*

60. *Id.*

“Deception” is defined in subsection (a)(3) by providing three separate instances where an act will be considered deceiving a disabled adult, elder person, or resident.⁶¹ The Act defines deception, in part, as “creating or confirming another person’s impression of an existing fact or past event which is false and which the accused knows or believes to be false.”⁶² Deception also occurs when someone maintains the “status or condition” of an elderly or disabled adult arising from a promise of the elderly or disabled adult’s personal services as a security for a debt, if the value of those services are not applied to the debt or the length and nature of the services are not limited and defined.⁶³ Preventing disabled adults or the elderly from obtaining information about the debt also constitutes deception.⁶⁴ Finally, promising such benefits or services when the accused does not intend to deliver or perform the services or knows that the services will not be delivered or performed is considered deception.⁶⁵

Section 1 continues defining new terms in subsection (a)(4) by providing that any illegal or improper use of a disabled adult, elder person, or resident’s resources through the use of “undue influence, harassment, duress, false representation, false pretense, or any other similar means” for the accused’s or someone else’s profit or advantage will be considered “exploitation” under the Act.⁶⁶ The Act then defines “[i]solation” as preventing such persons from contacting their friends or family as well as welfare agencies, law enforcement officers, health providers, or others against such persons’ wishes or without their knowledge.⁶⁷

New Offenses and Corresponding Punishments

Following the subsection (a) definitions, subsection (b) defines the offense of trafficking of a disabled adult, elder person, or resident.⁶⁸

61. *Id.*

62. *Id.*

63. O.C.G.A. § 16-5-102.1(a)(3)(B) (2018).

64. *Id.*

65. O.C.G.A. § 16-5-102.1(a)(3)(C) (2018).

66. 2018 Ga. Laws 608, § 1, at 609.

67. *Id.* at 610.

68. *Id.*

Any person who “through deception, coercion, exploitation, or isolation” commits the offense of trafficking when he or she “knowingly recruits, harbors, transports, provides, or obtains by any means a disabled adult, elder person, or resident” so that he or she may appropriate the victim’s resources for their own or another’s benefit.⁶⁹ However, evidence of a mere failure to deliver benefits or perform services will not alone constitute enough evidence to authorize a conviction.⁷⁰

Subsection (c) lists the penalty and provides that a violator will be guilty of a felony and, once convicted, will be subject to imprisonment for one to twenty years or fined up to \$100,000, or both.⁷¹ Subsection (d) provides that each individual violation of subsection (b) constitutes a separate offense and will not merge with other offenses.⁷²

The simplified penalty section reflects changes made in the Committee substitute that eliminated the mandatory minimum language and tiered-punishment system.⁷³ The original version of the bill had tiers of sentencing based on the number of victims and a five-year minimum prison sentence.⁷⁴ However, as previously discussed, the Committee simplified the structure of penalties because of the difficulty of passing legislation with tiered sentencing provisions and so that judges may have more discretion.⁷⁵

Exceptions

The new Code section lays out an exception for certain individuals who may otherwise violate subsection (b) in the course of their employment.⁷⁶ Subsection (f) provides that the new Code section will neither apply to physicians or people under a physician’s direction nor a hospital, hospice, or long-term care facility or employees and

69. O.C.G.A. § 16-5-102.1(b) (2018).

70. O.C.G.A. § 16-5-102.1(e) (2018).

71. O.C.G.A. § 16-5-102.1(c) (2018).

72. O.C.G.A. § 16-5-102.1(d) (2018).

73. *See supra* note 29 and accompanying text.

74. *See* HB 803, as introduced, 2018 Ga. Gen. Assemb.

75. House Committee Video, *supra* note 5, at 13 min., 56 sec. (remarks by Rep. Bert Reeves (R-34th)).

76. O.C.G.A. § 16-5-102.1(f) (2018).

agents of such institutions.⁷⁷ In order to qualify for this exception, the person must be acting in good faith within the scope of the employment or agency, a durable power of attorney, an advance directive, a Physician Orders for Life-Sustaining Treatment form under Code section 31-1-13, an order not to resuscitate, or the instructions of the patient or the patient's lawful surrogate decision maker.⁷⁸

Analysis

New Law Enforcement Vehicles for Protection of the Elderly and Disabled

Representative Wendell Willard (R-51st) introduced the Act to further the recent legislative initiative of protecting disabled people and the elderly from being abused by “completing the circle of legislation necessary to make sure that the vulnerable individuals in [Georgia] are protected.”⁷⁹ The GBI recognized that there was a criminal enterprise operating within Georgia that took advantage of the disabled and elderly, yet the GBI was powerless to stop it.⁸⁰ Prior to the passage of Code section 16-5-102.1, an abusive criminal could avoid the GBI's grasp by transporting the disabled and elderly around the state.⁸¹ However, the addition of these provisions has provided the GBI the “tool that's necessary for law enforcement to stop this type of conduct.”⁸²

With the passage of the Act, the GBI and other law enforcement may now protect the elderly and disabled from being merely coerced by a party who attempts to take advantage of them.⁸³ Now, law enforcement can take action against a wide range of strategies used to “warehouse” and transport the elderly and disabled.⁸⁴ Prior to the

77. 2018 Ga. Laws 608, § 1, at 610.

78. O.C.G.A. § 16-5-102.1(f).

79. House Committee Video, *supra* note 5, at 9 min., 0 sec. (remarks by Rep. Wendell Willard (R-51st)).

80. Senate Committee Video, *supra* note 5, at 6 min., 45 sec. (remarks by GBI Dir. Vernon Keenan).

81. *Id.* at 4 min., 20 sec. (remarks by Rep. Wendell Willard (R-51st)).

82. *Id.*

83. O.C.G.A. § 16-5-102.1(a)(1) (Supp. 2018).

84. *Id.*

Act, law enforcement had much less power to stop abusers from a spectrum of coercive activities, such as blackmailing an elderly or disabled person into a fraudulent enterprise.⁸⁵

Additionally, an abuser could face prosecution for tricking an elderly or disabled person into joining a benefits warehouse.⁸⁶ While the GBI could previously make an arrest when threats or intimidation were used, the Act now allows for prosecution of those who merely lie to the disabled and elderly for the purpose of taking their resources.⁸⁷ A criminal enterprise now faces potential prosecution for simply trying to avoid detection by law enforcement.⁸⁸ Where the prior statutes provided protection from general exploitation, the Act now provides a detailed description of the crime to include even a mere improper use of a disabled or elderly person's resources through "undue influence, harassment, duress, false representation, false pretense, or other similar means."⁸⁹

Finally, the Act provides law enforcement a means to prevent disabled or elderly persons from being isolated from their families and support systems.⁹⁰ The statutes in place prior to the Act protected disabled and elderly persons from acts such as physical abuse and unreasonable confinement, but did not go as far as to prevent a person from keeping the elderly and disabled from contacting those who would care for them.⁹¹ The Agency may now pursue a suspected abuser by simply showing that vulnerable citizens were isolated against their wishes or without their knowledge.⁹²

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85. *Id.*; House Committee Video, *supra* note 5, at 9 min., 30 sec. (remarks by Rep. Wendell Willard (R-51st)).

86. O.C.G.A. § 16-5-102.1(a)(3).

87. *Id.*; O.C.G.A. § 16-5-102 (Supp. 2018).

88. *See* O.C.G.A. § 16-5-102.1(a)(4) (Supp. 2018).

89. *Id.*

90. O.C.G.A. § 16-5-102.1(a)(5) (Supp. 2018).

91. O.C.G.A. § 16-5-102.

92. O.C.G.A. § 16-5-102.1(a)(5).