

2023

SB 62 - Local Ordinances and Public Camping

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LOCAL GOVERNMENT

***Provisions Applicable to Counties and Municipal Corporations:
Amend Titles 31, 36, and 50 of the Official Code of Georgia
Annotated, Relating to Health, Local Government, and State
Government, Respectively, so as to Prohibit Hospitals, Local
Governments, and Local Authorities from Dropping Off Homeless
Individuals in Counties Other than such Person's County of
Residency or the Area of Operation or Jurisdiction of the Hospital,
Local Government, or Local Authority; Provide for Exceptions;
Provide for Liability; Prohibit Certain Local Ordinances or Policies
Relating to Public Camping or Sleeping; Provide for Enforcement;
Provide for a Performance Audit by the State Auditor on Public
Spending on Homeless Programs and Services; Provide for
Definitions; Provide for Related Matters; Repeal Conflicting Laws;
and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 31-7-23.1 (new); 36-60-31 (new); 36-80-31 (new); 50-6-10 (new)
BILL NUMBER:	SB 62
ACT NUMBER:	274
GEORGIA LAWS:	2023 Ga. Laws 569
EFFECTIVE DATE:	July 1, 2023
SUMMARY:	The Act prohibits cities and counties from adopting written policies blocking the enforcement of their existing bans on unauthorized public camping. The Act generally prohibits hospitals and local law enforcement from dropping off homeless individuals outside those groups' areas of operation. Lastly, the Act requires a performance audit of public spending on homelessness.

History

The motivation behind Senate Bill (SB) 62 was twofold. First, proponents of SB 62 expressed concern around homelessness in Georgia and a strong desire to do something about it.¹ Proponents framed the legislation as a moral issue, asking their fellow lawmakers to show “compassion.”² Representative Katie Dempsey (R-13th), who sponsored the legislation in the House, spoke about her experience of driving around Atlanta and seeing people on the streets in tents, atop cardboard, or simply on blankets.³ Representative Dempsey described the situation as “heartbreaking” and stressed that lawmakers are not helping the homeless population when “we sort of act like we don’t see it.”⁴ Representative Dempsey highlighted the impact of COVID-19, in terms of forcing even more families from their homes.⁵ Representative Dempsey stressed how the results of an audit will inform legislative action and make sure the money being spent on services is done so in a manner to maximize benefits for the homeless.⁶ “We need to help,” Representative Dempsey said.⁷

Second, SB 62 was motivated by the Cicero Institute, a Texas-based think tank that advocates against “Housing First”—an approach that prioritizes finding permanent housing for people experiencing homelessness.⁸ At the same time, the organization is against camping on sidewalks and in public parks.⁹ According to Cicero, states should set up sanctioned camping areas if necessary.¹⁰ The organization’s

1. Telephone Interview with Rep. Katie Dempsey (R-13th) (May 9, 2023) [hereinafter Dempsey Interview] (on file with the Georgia State University Law Review).

2. Video Recording of House Proceedings at 4 hr., 49 min., 5 sec. (Mar. 27, 2023) [hereinafter House Proceedings Video] (remarks by Rep. Katie Dempsey (R-13th)), <https://www.youtube.com/watch?v=9AW0USa2vic&t=16431s> [<https://perma.cc/VXV8-XTSY>].

3. *Id.* at 4 hr., 37 min., 11 sec.

4. Dempsey Interview, *supra* note 1.

5. *Id.*

6. *Id.*

7. *Id.*

8. Joe Lonsdale, *Georgia Takes a Stand on Homeless Policy*, CITY J. (May 5, 2023), <https://www.city-journal.org/article/georgia-takes-a-stand-on-homeless-policy> [<https://perma.cc/7STC-C768>].

9. *Id.*

10. *Id.*

model legislation has influenced the legislative process in a number of states, including Arizona, Missouri, and Texas.¹¹

SB 62 was Cicero's third attempt at passing legislation in Georgia. The first two attempts differed in specifics but shared the same mission: addressing homelessness without additional housing. The first iteration, in 2021, was House Bill (HB) 713, which would have created legal homeless camps.¹² In 2022, Cicero attempted to pass SB 535, which would have created a misdemeanor for setting up unauthorized camps on public property.¹³ Both bills faced stiff opposition and ultimately failed.¹⁴

The issue of homelessness, however, remained at the forefront of some lawmakers' minds. After SB 535 failed, the Senate set up a Study Committee to look at unsheltered homelessness in Georgia.¹⁵ Specifically, the Senate Study Committee solicited input from police, neighborhood groups, homeless nonprofit organizations, and other involved parties, assessed the evidence of different policies, and developed recommendations on new state laws.¹⁶ The Senate Study Committee made twenty-six recommendations, ranging from increasing the minimum wage to creating a path for renters to expunge or seal their eviction records.¹⁷ Although few of the recommendations made it into SB 62, proponents of the legislation said the Senate Study

11. *Id.*; Kristian Hernández, *Homeless Camping Bans Are Spreading. This Group Shaped the Bills*, STATELINE (Apr. 8, 2023, 12:00 AM), <https://stateline.org/2022/04/08/homeless-camping-bans-are-spreading-this-group-shaped-the-bills/> [<https://perma.cc/4G99-Z88V>].

12. Stanley S. Jones, Jr., Helen L. Sloat & George S. Ray, *Gold Dome Report – Legislative Day 32*, NELSON MULLINS (Mar. 15, 2021), https://www.nelsonmullins.com/idea_exchange/alerts/gold_dome/all/gold-dome-report-legislative-day-32 [<https://perma.cc/VVD6-BDQK>]; Beau Evans, *Rep. Dempsey Pitches Legal Homeless Camps Bill in General Assembly*, ROME NEWS-TRIB. (Mar. 15, 2021), https://www.northwestgeorgianews.com/rome/news/local/rep-dempsey-pitches-legal-homeless-camps-bill-in-general-assembly/article_766a3bc4-85ca-11eb-a98b-d3f008dbe9c8.html [<https://perma.cc/Y33E-95AG>].

13. Stephanie Stokes, *State Bill Criminalizing Homeless Encampments Advances in Georgia Senate*, WABE (Mar. 9, 2022), <https://www.wabe.org/state-bill-criminalizing-homeless-encampments-advances-in-georgia-senate/> [<https://perma.cc/P9US-FX9T>].

14. See Telephone Interview with Cathryn Vassell, Chief Executive Officer, Partners for Housing Opportunities Made for Everyone (HOME) (May 8, 2023) [hereinafter Vassell Interview] (on file with the Georgia State University Law Review).

15. GA. SENATE RSCH. OFF., FINAL REPORT OF THE SENATE STUDY COMMITTEE ON UNSHELTERED HOMELESSNESS 2 (2022) [hereinafter SENATE REPORT].

16. *Id.*

17. *Id.* at 11–13.

Committee was essential in educating lawmakers on the issue.¹⁸ Notably, Senator Carden Summers (R-13th), who went on to sponsor SB 62 in the 2023 legislative session, chaired the Senate Study Committee.¹⁹

Bill Tracking of SB 62

Consideration and Passage by the Senate

Senator Carden Summers (R-13th) sponsored SB 62 in the Senate, with Senator Randy Robertson (R-29th), Senator Blake Tillery (R-19th), Senator Mike Dugan (R-30th), Senator Frank Ginn (R-47th), Senator Rick Williams (R-25th), Senator Larry Walker, III (R-20th), Senator Billy Hickman (R-4th), Senator Russ Goodman (R-8th), Senator Lee Anderson (R-24th), Senator Max Burns (R-23rd), Senator Shawn Still (R-48th), and Senator Brandon Beach (R-21st) cosponsoring.²⁰ The bill was placed in the Senate hopper on January 31, 2023, and the Senate first read it on February 1, 2023.²¹ The Senate referred the bill to the Senate State and Local Governmental Operations Committee.²²

The Committee favorably reported the bill by substitute on February 14, 2023.²³ The substitute incorporated new language allowing a person to bring a *qui tam* action “in the name of the state” when a county or municipal corporation fails to enforce its own anticamping prohibitions.²⁴ Additionally, the substitute eliminated language requiring the Department of Community Affairs to allocate available funds “for the development, purchase, or rehabilitation of and supportive services in transitional housing for homeless individuals,

18. Dempsey Interview, *supra* note 1.

19. SENATE REPORT, *supra* note 15, at 14.

20. Georgia General Assembly, SB 62, Bill Tracking [hereinafter SB 62, Bill Tracking], <https://www.legis.ga.gov/legislation/63809> [<https://perma.cc/X5GT-DKWX>].

21. *Id.*; State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

22. State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023; SB 62, Bill Tracking, *supra* note 20.

23. State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

24. SB 62 (SCS), § 1, p. 2, ll. 33–37, 2023 Ga. Gen. Assemb. A *qui tam* action is a statutory-based lawsuit brought by a private citizen, in which the government receives part of the recovered penalty. *Qui Tam Action*, BLACK’S LAW DICTIONARY (11th ed. 2019).

which shall be focused on the needs of people in recovery from substance use disorders.”²⁵

The Senate read the bill for the second time on February 15, 2023, and the third time on March 2, 2023.²⁶ That same day, five floor amendments were introduced. Senator Summers, accompanied by Senator Steve Gooch (R-51st), Senator Robertson, and Senator Gloria Butler (D-55th), introduced floor amendment 1 to the bill.²⁷ Floor amendment 1 eliminated Section 3, which previously established and required the state to allocate funds for sanctioned camping areas.²⁸ Senator Jason Esteves (D-6th) introduced floor amendments 2 and 3 to the bill.²⁹ Floor amendment 2 eliminated the language added by the Committee, thereby removing a person’s ability to bring a *qui tam* action.³⁰ Floor amendment 3 incorporated a requirement that any policy be “written” and eliminated the word “discourage” from the language of Section 1.³¹ Senator Tillery, accompanied by Senator Bo Hatchett (R-50th) on floor amendment 4A, introduced floor amendments 4 and 4A to the bill.³² Floor amendment 4 substituted a writ of mandamus for the civil action.³³ Floor amendment 4A amended floor amendment 4 to eliminate the overlooked *qui tam* action language.³⁴ Following the withdrawal of floor amendment 2, the remaining four amendments passed, and the Senate adopted the bill by a vote of 49 to 7.³⁵

25. Compare SB 62, as introduced, § 3, p. 3, ll. 49–57, 2023 Ga. Gen. Assemb., with SB 62 (SCS), § 3, pp. 3–4, ll. 51–75, 2023 Ga. Gen. Assemb.

26. State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

27. SB 62 (SCSFA 1), 2023 Ga. Gen. Assemb.

28. *Id.*; SB 62 (SCS), § 3, pp. 3–4, ll. 51–75, 2023 Ga. Gen. Assemb.

29. Withdrawn Senate Floor Amendment 2 to SB 62 (AM 33 2028), introduced by Sen. Jason Esteves (D-6th), Mar. 2, 2023; SB 62 (SCSFA 3) (AM 33 2027), 2023 Ga. Gen. Assemb.

30. Withdrawn Senate Floor Amendment 2 to SB 62, *supra* note 29; SB 62 (SCS), § 1, p. 2, ll. 33–37, 2023 Ga. Gen. Assemb.

31. SB 62 (SCSFA 3) (AM 33 2027), 2023 Ga. Gen. Assemb.

32. SB 62 (SCSFA 4), 2023 Ga. Gen. Assemb.; SB 62 (SCSFA 4A), 2023 Ga. Gen. Assemb.

33. SB 62 (SCSFA 4), 2023 Ga. Gen. Assemb. A writ of mandamus is a court order compelling “performance of a particular act by . . . a governmental officer or body.” *Mandamus*, BLACK’S LAW DICTIONARY (11th ed. 2019).

34. SB 62 (SCSFA 4A), 2023 Ga. Gen. Assemb.; SB 62 (SCS), § 1, p. 2, ll. 35–37, 2023 Ga. Gen. Assemb.

35. Withdrawn Senate Floor Amendment 2 to SB 62, *supra* note 29; Georgia Senate Voting Record, SB 62, #127 (Mar. 2, 2023); SB 62, Bill Tracking, *supra* note 20; State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

Consideration and Passage by the House

Representative Katie Dempsey (R-13th) sponsored SB 62 in the House, and the House first read the bill on March 6, 2023.³⁶ The House read the bill for a second time on March 7, 2023, and referred the bill to the House Governmental Affairs Committee.³⁷

The Committee favorably reported the bill by substitute on March 16, 2023.³⁸ The substitute incorporated new language defining “area of operation,” “drop off,” “homeless individual,” “hospital,” and “hospital authority,” as well as prohibiting hospitals and any local governmental unit from dropping off homeless individuals in a different jurisdiction.³⁹ The substitute also incorporated new language to audit “expenditures by state and local law enforcement agencies to address homelessness” and to require local governments to comply with this state audit.⁴⁰

On March 27, 2023, the House read the bill for the third time.⁴¹ That same day, Representative James Beverly (D-143rd) moved to table the bill, but the motion failed by a vote of 77 to 99.⁴² The House then adopted the Committee substitute by a vote of 99 to 76.⁴³

36. SB 62, Bill Tracking, *supra* note 20; State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

37. SB 62, Bill Tracking, *supra* note 20; State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

38. State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

39. SB 62 (HCS), § 1, pp. 1–2, ll. 11–39, 2023 Ga. Gen. Assemb.; *id.* § 3, pp. 3–4, ll. 63–86.

40. SB 62 (HCS), § 4, p. 5, ll. 95–102, 2023 Ga. Gen. Assemb.

41. State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

42. Georgia House of Representatives Voting Record, SB 62, #304 (Mar. 27, 2023); House Proceedings Video, *supra* note 2, at 5 hr., 54 min., 49 sec. (remarks by Rep. James Beverly (D-143rd)). A subsequent motion to adopt the report of the Committee passed by a vote of 100 to 76. Georgia House of Representatives Voting Record, SB 62, #305 (Mar. 27, 2023).

43. Georgia House of Representatives Voting Record, SB 62, #306 (Mar. 27, 2023); State of Georgia Final Composite Status Sheet, SB 62, May 9, 2023.

Senate Consideration and Passage of the House Substitute

On March 27, 2023, Senator Kim Jackson (D-41st) moved to agree to the House substitute as amended.⁴⁴ The amendment struck lines 1 through 90 of the House substitute, eliminating everything but the state audit from the bill.⁴⁵ The amendment failed by a vote of 22 to 32.⁴⁶ Senator Summers then moved for the Senate to agree to the House substitute that same day.⁴⁷ The Senate agreed to the House substitute by a vote of 36 to 20.⁴⁸ On April 5, 2023, the Senate transmitted the bill to Governor Brian Kemp (R).⁴⁹ Governor Kemp signed SB 62 into law as Act 274 on May 3, 2023, with an effective date of July 1, 2023.⁵⁰

The Act

The Act creates the following portions of the Official Code of Georgia Annotated: Article 23.1 of Chapter 7 of Title 31, relating to hospital drop-offs of homeless individuals; Article 31 of Chapter 60 of Title 36, relating to enforcement of county and municipal camping prohibitions; Article 31 of Chapter 80 of Title 36, relating to government drop-offs of homeless individuals; and Article 10 of Chapter 6 of Title 50, relating to a state audit of local, state, and federal homeless funding.⁵¹ The crux of the Act evaluates how funds are spent within the state to increase accountability and to understand what funds “can be used to better the homeless situation that we have in

44. Video Recording of Senate Proceedings at 5 hr., 11 min., 47 sec. (Mar. 27, 2023) [hereinafter Mar. 27, 2023 Senate Proceedings Video] (remarks by Sen. Kim Jackson (D-41st)) <https://www.youtube.com/watch?v=IQVeHZOP14o> [<https://perma.cc/9U9C-RCRS>]; Failed Senate Floor Amendment to SB 62, introduced by Sen. Kim Jackson (D-41st), Mar. 27, 2023.

45. Failed Senate Floor Amendment to SB 62, *supra* note 44; SB 62 (HCS), §§ 1–4, pp. 1–4, ll. 1–90, 2023 Ga. Gen. Assemb.

46. Georgia Senate Voting Record, SB 62, #334 (Mar. 27, 2023).

47. Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 35 min., 43 sec. (remarks by Sen. Carden Summers (R-13th)).

48. Georgia Senate Voting Record, SB 62, #335 (Mar. 27, 2023).

49. SB 62, Bill Tracking, *supra* note 20.

50. *Id.*

51. 2023 Ga. Laws 569, § 1–4, at 569–71. Please note that the Code sections described as 36-60-30 and 36-80-29 in SB 62 were ultimately codified at 36-60-31 and 36-80-31, respectively. See O.C.G.A. § 36-60-31 (2023); O.C.G.A. § 36-80-31 (2023).

Georgia.”⁵² The Act has two additional purposes. The House Committee intended to reduce the burden on communities where homeless individuals continue to be “dropped off” from other parts of the state.⁵³ Similarly, the Act addressed local governments “ignoring” camping bans and the general homelessness problem and forces them to “pick up local control.”⁵⁴

Section 1

Section 1 creates Code section 31-7-23.1.⁵⁵ Subsection (a) defines five terms: “area of operation,” “drop off,” “homeless individual,” “hospital,” and “hospital authority.”⁵⁶ “Area of operation,” in the context of hospital authorities, is defined according to paragraph (1) Code section 31-7-71.⁵⁷ Code section 31-7-71 defines “area of operation” as “area within the city or county activating an authority,” as well as the “city or county in which the authority wishes to operate” as long as such operation is approved by the governing authorities.⁵⁸ For all other hospitals, “area of operation” is defined as “the county in which the hospital is located.”⁵⁹

“Drop off” refers to “the act of transporting a patient to a location different from the location where such patient received health care services or treatment” and includes, among other things, “directly providing or funding the transportation of such patient.”⁶⁰ “Homeless

52. Video Recording of Senate Proceedings at 1 hr., 3 min., 9 sec. (Mar. 2, 2023) [hereinafter Mar. 2, 2023 Senate Proceedings Video] (remarks by Sen. Carden Summers (R-13th)), <https://www.youtube.com/watch?v=lqVepB12bDA> [<https://perma.cc/43Z4-RUJU>]; Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 32 min., 13 sec. (remarks by Sen. Kim Jackson (D-41st)) (“We need to do a full and complete audit of where the money goes, who has the money, and is the money being used well. . . . Once we have a full audit, then we can make some calculated and important choices and decisions about how to best use that money.”).

53. Video Recording of House State and Local Governments Subcommittee Meeting at 56 min., 24 sec. (Mar. 15, 2023) [hereinafter House Subcommittee Video] (remarks by Rep. Houston Gaines (R-120th)), <https://www.youtube.com/watch?v=we1pnmnmqeg> [<https://perma.cc/55UL-H8SZ>].

54. House Proceedings Video, *supra* note 2, at 4 hr., 43 min., 32 sec. (remarks by Rep. Katie Dempsey (R-13th)).

55. 2023 Ga. Laws 569, § 1, at 569–70.

56. *Id.* at 569 (codified at O.C.G.A. § 31-7-23.1(a) (2023)).

57. § 31-7-23.1(a).

58. O.C.G.A. § 31-7-71(1) (2023).

59. § 31-7-23.1(a)(1).

60. *Id.* § 31-7-23.1(a)(2).

individual” is defined as “a person who has no access to or can reasonably be expected not to have access to either traditional or permanent housing which can be considered safe, sanitary, decent, and affordable.”⁶¹ Finally, “hospital” refers to “a publicly or privately owned hospital” authorized to operate under Article 1, while “hospital authority” refers to “a hospital authority created pursuant to Article 4 of this chapter.”⁶²

Subsection (b) prohibits a hospital from dropping off a homeless individual outside of its area of operation unless: (1) “[s]uch drop-off location is in the county where such homeless individual was a resident prior to receiving health care services or treatment from such hospital” or (2) “[s]uch drop off is at a facility or with a person, business, or organization that has agreed to accept the patient.”⁶³ Subsection (c) then creates liability for costs incurred by a “state or local government entity . . . providing services for a homeless individual as a result of” a violation of subsection (b).⁶⁴

Section 2

Section 2 creates Code section 36-60-30.⁶⁵ Subsection (a) prohibits a county or municipal corporation from “adopt[ing] or enforce[ing] any written policy under which the county or municipal corporation prohibits the enforcement of any order or ordinance prohibiting unauthorized public camping, sleeping, or obstruction of sidewalks.”⁶⁶ Subsection (b) contains the same prohibition on county or municipal corporations adopting a written policy, but it directly applies to “a peace officer or prosecuting attorney who is employed by or otherwise under the direction or control of such county or municipal corporation.”⁶⁷ Subsection (c) then clarifies that subsections (a) and (b) do not prevent “a county or municipal corporation from adopting a

61. *Id.* § 31-7-23.1(a)(3).

62. *Id.* § 31-7-23.1(a)(4)-(5); *see generally* O.C.G.A. § 31-7-72 (2023) (outlining the pathway for creating a hospital authority).

63. *Id.* § 31-7-23.1(b).

64. *Id.* § 31-7-23.1(c).

65. 2023 Ga. Laws 569, § 2, at 570. Please note that the Code section described as 36-60-30 in SB 62 was ultimately codified at 36-60-31. *See* O.C.G.A. § 36-60-31 (2023).

66. § 36-60-31(a).

67. *Id.* § 36-60-31(b).

policy that encourages diversion programs or that offers the provision of services in lieu of citation or arrest.”⁶⁸

Subsection (d) establishes the individual and state methods of action following a violation of this Section.⁶⁹ Paragraph (1) authorizes the Attorney General to bring civil action “against any county or municipal corporation to enjoin a violation of this Code section.”⁷⁰ If such action is successful, paragraph (2) allows the Attorney General to recover “reasonable expenses,” including “court costs, reasonable attorney’s fees, investigative costs, witness fees, and deposition costs.”⁷¹ Paragraph (3) then allows a person to “bring a writ of mandamus . . . for the person and for the state,” as well as “recover court expenses and fees if successful.”⁷²

68. *Id.* § 36-60-31(c).

69. *Id.* § 36-60-31(d).

70. *Id.* § 36-60-31(d)(1).

71. *Id.* § 36-60-31(d)(2).

72. O.C.G.A. § 36-60-31(d)(3) (2023). After its introduction, SB 62 allowed an individual to bring a qui tam action, but this was eliminated following concerns raised by DeMetrius Causer and Rusi Patel, lawyers for the Georgia Municipal Association (GMA). SB 62 (SCS), § 1, p. 2, ll. 33–37, 2023 Ga. Gen. Assemb.; *see* SB 62, as introduced, § 1, p. 2, ll. 27–32, 2023 Ga. Gen. Assemb. (creating a mechanism of action in case of violation only for the Attorney General). Causer explained that allowing a citizen to bring a qui tam action would take discretion away from the Attorney General. Video Recording of Senate State and Local Government Committee Proceedings at 38 min., 11 sec. (Feb. 13, 2023) [hereinafter Senate SLGO Committee Video] (remarks by DeMetrius Causer, Government Relations Associate, Georgia Municipal Association) <https://www.youtube.com/watch?v=tetEUyMStsQ> [<https://perma.cc/742L-NGXM>]. Patel further stated that providing for legal action within Section 2 may incentivize a local government to repeal its camping ban entirely. *Id.* at 45 min., 13 sec. (remarks by Rusi Patel, General Counsel, Georgia Municipal Association). Instead, he suggested citizens could bring a mandamus action under the Georgia Code if they thought the local government was not doing its job. *Id.* at 43 min., 37 sec. Senator Esteves agreed that the qui tam action was problematic—the action would lead to “lots of litigation costs that don’t ultimately help the state advance ending homelessness,” and the action does not make sense given that qui tam actions typically address fraud. *Id.* at 41 min., 2 sec. (remarks by Sen. Jason Esteves (D-6th)). The Act provided for a writ of mandamus instead to address these concerns. 2023 Ga. Laws 569, § 2 at 570. Senator Josh McLaurin (D-14th), and later Senator Kim Jackson (D-41st), however, were still concerned the writ of mandamus would overburden the courts with litigation. Mar. 2, 2023 Senate Proceedings Video, *supra* note 52, at 1 hr., 15 min., 34 sec. (remarks by Sen. Josh McLaurin (D-14th)); Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 13 min., 55 sec. (remarks by Sen. Kim Jackson (D-41st)).

Section 3

Section 3 creates Code section 36-80-29.⁷³ The new Code section reflects the language of Code section 31-7-23.1 in many ways, except as applied to “a county, municipal corporation, political subdivision, local authority, or other local governmental unit” instead of a hospital or hospital authority.⁷⁴

Subsection (a) defines “drop off” and “homeless individual.”⁷⁵ “Drop off” is defined as “the act of transporting an individual to a location different from the location where the party transporting such individual assumed custody, control, or care of or provided treatment to such individual.”⁷⁶ Again, “directly providing or funding the transportation of such individual” is an example of acts included within the definition.⁷⁷ Additionally, “homeless individual” is defined the same as in Code section 31-7-23.1, with access (actual or reasonably expected) to temporary or permanent housing that meets certain conditions being the defining feature.⁷⁸

Subsection (b) prohibits any “county, municipal corporation, political subdivision, local authority, or other local governmental unit” from dropping off a known homeless individual outside the entities’ jurisdiction.⁷⁹ Subsection (b) also provides two exceptions to this prohibition; a location outside the entities’ jurisdiction is an acceptable drop off location when: (1) the “location is in the county where such homeless individual was a resident prior to coming under the custody, control, or care of or receiving treatment from such local government or local authority” or (2) the drop off is pre-arranged with a facility, person, business, or organization and that facility “has agreed to accept such homeless individual.”⁸⁰ Subsection (c) then creates liability for the state or local government entity that accrued costs for “providing

73. 2023 Ga. Laws 569, § 3, at 570–71. Please note that the Code section described as 36-80-29 in SB 62 was ultimately codified at 36-80-31. See O.C.G.A. § 36-80-31 (2023).

74. Compare § 36-80-31, with O.C.G.A. § 31-7-23.1 (2023).

75. § 36-80-31(a).

76. *Id.* § 36-80-31(a)(1).

77. *Id.*

78. *Id.* § 36-80-31(a)(2); see *supra* note 61 and accompanying text.

79. *Id.* § 36-80-31(b).

80. *Id.*

services for a homeless individual as a result of” violating this Code section.⁸¹

Senator Josh McLaurin (D-14th) raised concern over the exceptions listed in subsection (b).⁸² Senator McLaurin believed the Act’s language “legitimize[s] a system of drop off under certain conditions that local governments could justify,” leading to false imprisonment and Fourth Amendment seizure concerns that come with transporting an individual.⁸³ Senator McLaurin stated that, in his opinion, the Act created a “legal type of forced transportation by local governments,” which was a “dangerous step” for the General Assembly to take.⁸⁴

Section 4

Section 4 creates Code section 50-6-10.⁸⁵ Code section 50-6-10 first authorizes and orders the state auditor to:

[C]onduct a performance audit of spending on homeless programs and services in this state, including expenditures by the state, expenditures by municipalities and counties with substantial homeless populations, expenditures of federal funds allocated to the state for homeless programs, and expenditures by state and local law enforcement agencies to address homelessness.⁸⁶

81. O.C.G.A. § 36-80-31(c) (2023).

82. Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 21 min., 46 sec. (remarks by Sen. Josh McLaurin (D-14th)). Senator McLaurin made these comments in support of Senator Kim Jackson’s (D-41st) failed floor amendment to the House Committee substitute, which would have eliminated all but the audit from SB 62. *Id.* at 5 hr., 15 min., 45 sec.; Failed Senate Floor Amendment to SB 62, *supra* note 44.

83. Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 21 min., 46 sec.

84. *Id.*

85. 2023 Ga. Laws 569, § 4, at 571.

86. *Id.* (codified at O.C.G.A. § 50-6-10 (2023)). Representative Houston Gaines (R-120th) raised concern over “how much time or resources law enforcement” uses dealing with the homeless, so the Act includes specific language to evaluate local expenditures. House Subcommittee Video, *supra* note 53, at 51 min., 40 sec. (remarks by Rep. Houston Gaines (R-120th)). Senator Summers agreed with the need to evaluate local funding of homeless programs. Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 29 min., 3 sec. (remarks by Sen. Carden Summers (R-13th)).

Due to concern over visibility of the amount of federal government funding reaching local governments, the Code section orders local governments to “cooperate with the state auditor and grant access, at no cost, to all financial records and other programmatic information necessary to the completion of the performance audit.”⁸⁷ The Code section then specifies certain factors that should be evaluated in the audit: how the government awards homeless services’ contracts and grants, what metrics help evaluate whether that funding accomplishes its goal, whether awardees meet those metrics, and the effectiveness of the Georgia Homeless Management Information System (HMIS).⁸⁸ The section ends by requiring that the audit be reported “to the Governor, Lieutenant Governor, and Speaker of the House of Representatives no later than December 31, 2023.”⁸⁹

Analysis

As outlined above, this Act has three main components. The potential impact of each is distinct—one raises logistical and jurisdictional issues that may be complicated in big cities; one is not likely to have immediate effect; and one will almost certainly help form the foundation of future legislation related to homelessness in Georgia.

Limiting Drop-offs of Homeless Individuals

The potential impact of Sections 1 and 3, which limit where hospitals and local governmental units can drop off individuals experiencing homelessness, is mixed. On the one hand, the Act may benefit smaller cities with homeless services that can act as a “magnet

87. § 50-6-10; Video Recording of House Governmental Affairs Committee Meeting at 15 min., 56 sec. (Mar. 15, 2023) [hereinafter House Governmental Affairs Committee Video] (remarks by Rep. Shaw Blackmon (R-146th)), <https://www.youtube.com/watch?v=kqD-KPxMaJ4> [<https://perma.cc/Y92R-MFL3>] (proposing the language to help the state auditor); *id.* at 17 min., 53 sec. (remarks by Greg Griffin, State Auditor of Georgia) (discussing the state auditor’s limited ability to see what funds go to local governments from the federal government and recognizing that required cooperation would grant better access to those funds).

88. § 50-6-10.

89. *Id.*

for surrounding areas.”⁹⁰ Republican lawmakers from Athens and Brunswick reported that hospitals and local governments dropped off homeless people with no warning.⁹¹ The Act could help shelter those smaller cities, allowing them to focus and conserve their resources. On the other hand, the Act would likely not have a similar impact on larger cities, according to Cathryn Vassell, CEO of Partners for Housing Opportunities Made for Everyone (HOME), an organization that works to end homelessness in Atlanta.⁹² “That’s just not an issue for us,” Vassell said, but additional issues related to the new limits on drop-offs have been identified.⁹³

The Act allows hospitals and local law enforcement to drop off homeless individuals in their counties of residency.⁹⁴ Most unhoused people do not have a driver’s license with an address, so the “directive for hospitals to send people back to their home county is likely unenforceable.”⁹⁵ Similarly, Representative Mary Margaret Oliver (D-82nd) described the so-called antidumping provisions of the Act as “totally unworkable.”⁹⁶ Her district includes seven police districts, three cities, and at least three hospitals.⁹⁷ With so many overlapping jurisdictions and services, it’s not clear who can take whom, from where, Representative Oliver emphasized.⁹⁸

Representative Katie Dempsey (R-13th) acknowledged the situation is “a little complicated” in Atlanta but nevertheless views the Act as in the best interest of individuals experiencing homelessness.⁹⁹ According to Representative Dempsey: “The idea is to get people back

90. Jeff Amy, *Georgia Lawmakers: Localities Must Apply Homeless Camp Bans*, ASSOCIATED PRESS (Mar. 27, 2023, 10:22 PM), <https://apnews.com/article/homelessness-homeless-georgia-camping-dumping-52dad87b4719107475949598981eae16> [<https://perma.cc/A6D3-AMNJ>].

91. *Id.*

92. Vassell Interview, *supra* note 14.

93. *Id.*; Amy, *supra* note 90.

94. 2023 Ga. Laws 569, § 3, at 571.

95. Sean Keenan, *Opponents: ‘Anti-Homeless’ Bill That Cracks Down on Public Camping Won’t Help Unhoused Residents*, ATLANTA CIVIC CIRCLE (Apr. 10, 2023), <https://atlantaciviccircle.org/2023/04/10/georgia-legislation-doesnt-help-homeless-people/> [<https://perma.cc/4QR9-BDYF>].

96. House Proceedings Video, *supra* note 2, at 4 hr., 48 min., 38 sec. (remarks Rep. Mary Margaret Oliver (D-82nd)).

97. *Id.* at 4 hr., 47 min., 21 sec.

98. *Id.*

99. *Id.* at 4 hr., 48 min. (remarks by Rep. Katie Dempsey (R-13th)); Dempsey Interview, *supra* note 1.

to their home, hopefully to their families.”¹⁰⁰ Lastly, it is important to note that although the Act generally prohibits hospitals and law enforcement from dropping homeless individuals off in other counties, they can do so with permission.¹⁰¹ In other words, if facilities agree to accept individuals from outside their jurisdictions, Sections 1 and 3 may have very little impact.

Enforcing Laws Already on the Books

Section 2 is not likely to have immediate effect. This provision prohibits cities and counties from adopting written policies that block the enforcement of existing bans on unauthorized public camping.¹⁰² The word “written” is significant. Cities can only be sued if they issue written guidance directing that their own bans are not enforced.¹⁰³ Currently, no city or county in Georgia is known to have such written guidance.¹⁰⁴ “It doesn’t change how communities enforce or don’t enforce existing legislation or ordinances,” said Vassell, of Partners for HOME.¹⁰⁵ Section 2 is more of a preventative measure, according to Representative Dempsey.¹⁰⁶ Although no city or county is “actively refusing to enforce its laws today,” Representative Dempsey said, “it will make sure that there’s no room for that as we move forward.”¹⁰⁷

Separately, some lawmakers voiced concern that Section 2 would criminalize homelessness because the Act requires local governments to enforce their camping bans, which may provide criminal penalties.¹⁰⁸ Representative Omari Crawford (D-84th) noted that

100. Dempsey Interview, *supra* note 1.

101. *See generally* 2023 Ga. Laws 569.

102. 2023 Ga. Laws 569, §2, at 570.

103. Amy, *supra* note 90.

104. Dempsey Interview, *supra* note 1.

105. Vassell Interview, *supra* note 14.

106. Dempsey Interview, *supra* note 1.

107. *Id.*

108. Mar. 2, 2023 Senate Proceedings Video, *supra* note 52, at 1 hr., 17 min., 15 sec. (remarks by Sen. Nikki Merritt (D-9th)); House Proceedings Video, *supra* note 2, at 4 hr., 57 min., 56 sec. (remarks by Rep. Omari Crawford (D-84th)); *id.* at 5 hr., 6 min., 44 sec. (remarks by Rep. Jasmine Clark (D-108th)); *id.* at 6 hr., 3 min., 24 sec. (remarks by Rep. Ruwa Romman (D-97th)); *see e.g.*, BRUNSWICK, GA., ORDINANCES

punishing homeless individuals who cannot find shelter may be a violation of the Eighth Amendment.¹⁰⁹ However, supporters of the bill repeatedly stated that the bill is not about criminalizing homelessness.¹¹⁰

Isabel Otero, from the Southern Poverty Law Center, discussed the organization's concern that, by "prohibit[ing] counties and municipalities from exercising their judgment and discretion regarding" their own camping bans, the Act removed police discretion.¹¹¹ Senator Randy Robertson (R-29th) did not see Section 2 as interfering with police discretion but rather as protecting it.¹¹² However, Senator Jason Esteves (D-6th) recognized the potential issue and introduced an amendment (later adopted) clarifying ambiguous language—the terms "discourages" and "any policy"—that could lead to such interference.¹¹³

§ 16-94 (2022) (prohibiting camping in a public area but including no criminal penalty); MARIETTA, GA., ORDINANCES §§ 10-4-030, -160 (1996) (prohibiting camping in the "streets, public square or park," with a fine of \$500 or imprisonment up to six months); ROME, GA., ORDINANCES § 14-25 (2019) (deeming camping in a public area unlawful, where "a person may be issued a citation or arrested" if they ignore a first warning).

109. House Proceedings Video, *supra* note 2, at 4 hr., 50 min., 13 sec. (remarks by Rep. Omari Crawford (D-84th)). Isabel Otero, of the Southern Poverty Law Center, issued the same reminder during the Senate Committee meeting. Senate SLGO Committee Video, *supra* note 72, at 20 min., 3 sec. (remarks by Isabel Otero, Georgia Policy Director, Southern Poverty Law Center Action Fund).

110. Senate SLGO Committee Video, *supra* note 72, at 5 min., 58 sec. (remarks by Sen. Carden Summers (R-13th)); House Proceedings Video, *supra* note 2, at 4 hr., 43 min., 32 sec. (remarks by Rep. Katie Dempsey (R-13th)); *id.* at 5 hr., 41 min., 46 sec. (remarks by Rep. John LaHood (R-175th)); *id.* at 5 hr., 45 min., 17 sec. (remarks by Rep. Katie Dempsey (R-13th)); *id.* at 6 hr., 2 min., 13 sec. (remarks by Rep. Meshia Mainor (R-56th)) (pointing out that the bill "is not going to all of a sudden make police officers arrest homeless [individuals]").

111. Senate SLGO Committee Video, *supra* note 72, at 18 min., 21 sec. (remarks by Isabel Otero, Georgia Policy Director, Southern Poverty Law Center Action Fund).

112. *Id.* at 23 min., 51 sec. (remarks by Sen. Randy Robertson (R-29th)); *id.* at 26 min., 2 sec. (remarks by Sen. Randy Robertson (R-29th)); Mar. 2, 2023 Senate Proceedings Video, *supra* note 52, at 1 hr., 31 min. 29 sec. (remarks by Sen. Randy Robertson (R-29th)) (explaining that the Act "does not take the discretion away from the officer if they should choose to relocate [a homeless individual] to a safer and more comfortable space").

113. SB 62 (SCSFA 3) (AM 33 2027), 2023 Ga. Gen. Assemb. Mar. 2, 2023 Senate Proceedings Video, *supra* note 52, at 1 hr., 38 min., 43 sec. (remarks by LG Burt Jones (R)); Senate SLGO Committee Video, *supra* note 72, at 27 min., 39 sec. (remarks by Sen. Jason Esteves (D-6th)); *see id.* at 29 min., 47 sec. (remarks by Isabel Otero, Georgia Policy Director, Southern Poverty Law Center Action Fund) (discussing how the word "discourages" influences law enforcement decision-making, rather than leaving decision-making to the voter). Senator Esteves also wanted to eliminate confusion regarding Section 2 of the bill and added "written" to provide a "bright-line test." Mar. 2, 2023 Senate Proceedings Video, *supra* note 52, at 1 hr., 13 min., 38 sec. (remarks by Sen. Jason Esteves (D-6th)).

Similarly, multiple senators and representatives voiced concern regarding Section 2's infringement on local government control.¹¹⁴ Representative Dempsey clarified that the Act only requires those counties or municipalities who have chosen to enact an ordinance banning public camping to enforce it.¹¹⁵ No county or municipality is required to have a camping ban.¹¹⁶

Lastly, Representative Shea Roberts (D-52nd) claimed the Act is “not legal on its face” because the writ of mandamus is in direct conflict with the Georgia Code.¹¹⁷ Senator Carden Summers (R-13th), said that Senate lawyers, concerned with qui tam action language, substituted the writ of mandamus for the qui tam action and saw no issues with an individual bringing a writ of mandamus.¹¹⁸

114. Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 16 min., 45 sec. (remarks by Sen. Josh McLaurin (D-14th)) (discussing the issues with “forcing the[] hand” of local governments to act under Section 2); House Proceedings Video, *supra* note 2, at 4 hr., 41 min., 50 sec. (remarks by Rep. Michelle Au (D-50th)) (asking how Section 2 does not “preempt local control”); *id.* at 4 hr., 52 min., 18 sec. (remarks by Rep. Omari Crawford (D-84th)) (stating that cities should not be micromanaged); *id.* at 5 hr., 26 min., 2 sec. (remarks by Rep. Stacey Evans (D-57th)) (stating that the General Assembly should let local governments do their jobs without micromanaging them); *id.* at 5 hr., 28 min., 42 sec. (remarks by Rep. Inga Willis (D-55th)) (“Micromanaging jurisdictions does not address the root causes of homelessness, but only manages, again, its symptoms.”); *see also* Senate SLGO Committee Video, *supra* note 72, at 37 min., 5 sec. (remarks by Kaitlyn Molloy, Public Policy Counsel, Southern Center for Human Rights) (raising concern that potential lawsuits due to lack of enforcement “disincentivizes local communities from exploring solutions to reduce unsheltered homelessness outside of the criminal legal system”).

115. House Proceedings Video, *supra* note 2, at 4 hr., 41 min., 56 sec. (remarks by Rep. Katie Dempsey (R-13th)).

116. *Id.*

117. House Governmental Affairs Committee Video, *supra* note 87, at 8 min., 18 sec. (remarks by Rep. Shea Roberts (D-52nd)); *id.* at 9 min., 40 sec. Georgia Code section 9-6-20 states that mandamus may issue when “there is no other specific legal remedy.” O.C.G.A. § 9-6-20 (2023). Section 2 of the Act creates an avenue for the Attorney General to enjoin any government entity that is not enforcing its own camping ban. 2023 Ga. Laws 569, § 2, at 570 (codified at O.C.G.A. § 30-60-30(d)(1) (2023)). Although this language appears to create a specific remedy, *Blalock v. Cartwright* suggests that an individual could still pursue a writ of mandamus because the remedy provided is not a private right of action. *See Blalock v. Cartwright*, 300 Ga. 884, 886–88, 799 S.E.2d 225, 227–29 (2017) (focusing on the statute’s private right of action for determining whether mandamus was proper, despite the statute also authorizing the Attorney General to bring action to enjoin or seek civil penalties).

118. House Governmental Affairs Committee Video, *supra* note 87, at 8 min., 50 sec. (remarks by Sen. Carden Summers (R-13th)).

Laying the Groundwork for Future Legislation

In all likelihood, the Act's most important and impactful part will be Section 4, the performance audit. Senator Summers, who sponsored the bill in the Senate, described the audit as the "crux of the bill."¹¹⁹ Senator Summers was clear that SB 62 did not solve the issue of homelessness, but the Act is an important start.¹²⁰ Accordingly, both those in support of the Act and those against the Act anticipate additional legislation.¹²¹ The results of the audit, due at end of the 2023, will likely lay the groundwork for such action.

During discussions of the Act, lawmakers repeatedly emphasized the importance of the audit.¹²² "Until we fully know what our problem is and until we get a handle around the amount of funding that comes in so that we can manage this program, then I'm afraid we're throwing a whole lot of cash into the wind," said Senator Robertson.¹²³ Similarly, Senator Kim Jackson (D-41st) stressed that the audit was necessary so that lawmakers "can make some calculated and important choices and decisions about how to best use that money."¹²⁴ Representative Dempsey was even more explicit in the expected impact of the audit, saying: "That information, we need to have that so that when we start session again, we're able to really look at the current facts."¹²⁵

Because it is too early to say what the results of the audit will be, it is too early to predict its impact on future legislation. Representative Dempsey did not have any specific proposals in mind for next year but noted that lawmakers should continue tackling the issue of homelessness.¹²⁶ The audit sets the stage for future action: "It's a

119. Mar. 2, 2023 Senate Proceedings Video, *supra* note 52, at 1 hr., 9 min., 3 sec. (remarks Sen. Carden Summers (R-13th)).

120. *Id.* at 1 hr., 4 min., 25 sec.

121. Dempsey Interview, *supra* note 1; Vassell Interview, *supra* note 14.

122. Mar. 2, 2023 Senate Proceedings Video, *supra* note 52, at 1 hr., 25 min. (remarks by Sen. Randy Robertson (R-29th)); Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 32 min. (remarks by Sen. Kim Jackson (D-41st)).

123. Mar. 2, 2023 Senate Proceedings Video, *supra* note 52, at 1 hr., 27 min., 26 sec.

124. Mar. 27, 2023 Senate Proceedings Video, *supra* note 44, at 5 hr., 32 min.

125. Dempsey Interview, *supra* note 1.

126. *See id.*

process of discovery, but quick, so we can be ready for next year if we decide to do something else,” said Representative Dempsey.¹²⁷

Conclusion

The General Assembly enacted Act 274, codified as Code sections 31-7-23.1, 36-60-31, 36-80-31, and 50-6-10, with the intent of helping the homeless population in Georgia. The first two components—enforcing existing law and prohibiting drop-offs of homeless individuals except in certain instances, are unlikely to have an immediate impact. The key component—a state audit of funding for homeless programs—may enable future legislative action. Whether this goal is realized, however, will not be known until the 2024 General Assembly convenes. Overall, although Act 274 may not have significant immediate effect, as Senator Carden Summers (R-13th) stated, it could be “a start in helping” remedy the homelessness issue in Georgia.¹²⁸

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127. *Id.*

128. Senate SLGO Committee Video, *supra* note 72, at 6 min., 34 sec. (remarks by Sen. Carden Summers (R-13th)).

