

January 2016

HB 72 – Crimes and Offenses: Crimes Against the Person

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Recommended Citation

(2016) "HB 72 – Crimes and Offenses: Crimes Against the Person," *Georgia State University Law Review*: Vol. 32 : Iss. 1 , Article 5.
Available at: <http://readingroom.law.gsu.edu/gsulr/vol32/iss1/5>

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CRIMES AND OFFENSES

Crimes Against the Person: Amend Title 16, Article 1 of Chapter 8 of Title 17, Chapter 5 of Title 30, and Title 31 of the Official Code of Georgia Annotated, Relating to Crimes and Offenses, General Provisions for Trial, Protection of Disabled Adults and Elder Persons, and Health, Respectively, so as to Expand and Clarify Protection of Disabled Adults and Elder Persons; Provide for and Revise Definitions; Prohibit Private Causes of Actions or Civil Remedies Pursuant to Provisions of the “Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act”; Provide for Venue; Provide for Abuse, Neglect, and Exploitation of Disabled Adults, Elder Persons, and Residents As a Racketeering Activity; Provide for Priority Scheduling of Cases when the Alleged Victim is a Disabled Adult or Elder Person; Change Provisions Relating to Reporting Abuse, Neglect, and Exploitation of Disabled Adults and Elder Persons; Change Provisions Relating to Inspection of Premises Pursuant to Inspection Warrants; Repeal Provisions Relating to Exclusion of Evidence Obtained During the Execution of an Inspection Warrant; Amend Section 21 of Article 3 of Chapter 12 of Title 24 of the Official Code of Georgia Annotated, Relating to Disclosure of AIDS Confidential Information, so as to Change Provisions Relating to Disclosure of Such Information under Certain Circumstances; Provide for Procedure; Amend Section 29 of Chapter 1 of Title 51 of the Official Code of Georgia Annotated, Relating to General Provisions Relative to Torts, so as to Revise the Good Samaritan Law to Provide for Damaging Property in Emergency Situations; Amend Section 20 of Article 2 of Chapter 3 of Title 16 of the Official Code of Georgia Annotated, Relating to Justification, so as to Cross-Reference the Good Samaritan Law; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 16-3-20 (amended);
 16-5-100, -103, -104 (amended), -105
 (new); 16-14-3 (amended); 17-8-1
 (amended); 24-12-21 (amended);

	30-5-3, -4 (amended); 31-2-9 (amended), -13 (new); 31-5-10, -20, -21, -24 (amended); 51-1-29 (amended)
BILL NUMBER:	HB 72
ACT NUMBER:	86
GEORGIA LAWS:	2015 Ga. Laws 598
SUMMARY:	The Act broadens protection for elder persons and the disabled by expanding reporting requirements for suspected abuse. The Act clarifies existing laws regarding care for the elderly and disabled. The Act allows expedited disclosure of AIDS confidential information where an individual is the subject of an order for involuntary commitment for mental illness. The Act also clarifies that rendering “emergency care” under Georgia’s Good Samaritan law includes rescuing an incapacitated or endangered person from a locked motor vehicle.
EFFECTIVE DATE:	July 1, 2015

History

On March 3, 2015, a Cobb County jury convicted Jeffrey and Joseph Carr of stealing more than \$4 million from Frances Perkins, a ninety-three-year-old resident of East Cobb who suffers from ill mental health.¹ Jeffrey and Joseph, a father and son pair, were convicted of violating Georgia’s Racketeer Influenced and Corrupt Organizations (RICO) Act.² Joseph Carr will serve two years in prison as a result of his offenses; Jeffrey will serve ten.³

1. Brittini Ray, *Father to Serve 2 Years, Son 10 for Stealing from Widow*, MARIETTA DAILY J., Mar. 10, 2015, available at 2015 WLNR 7234050.

2. *Id.*

3. *Id.*

In 2013, the Georgia General Assembly passed House Bill (HB) 78, which was codified in Code section 30-5-4.⁴ The bill effectively rewrote sections of the Georgia Code relating to abuse of the elderly and individuals with disabilities, mandating stricter reporting requirements if an individual is suspected of abusing an elderly or disabled person.⁵ The bill was passed in response to increasing rates of elderly and disabled abuse over the last several years.⁶ Between 2008 and 2012, rates of abuse rose 65% and continue to rise today.⁷ Nationally, more than \$2.9 billion is lost annually by elderly victims of financial abuse.⁸ Protecting elderly persons from abuse is of particular importance in Georgia, a state with the ninth-fastest growing population of individuals over the age of sixty.⁹

After observing the prevalence of white-collar crimes against elderly individuals, such as the case of Jeffrey and Joseph Carr, members of the Georgia General Assembly wanted to strengthen and clarify the current law to further protect against such financial abuse.¹⁰ In response to these concerns, the Chairman of the House Judiciary Committee, Representative Wendell Willard (R-51st), introduced HB 72 during the 2015 legislative session.¹¹

Part IA of the Act was originally introduced as HB 119 by Representative Bert Reeves (R-34th).¹² Certain professionals may issue an order to apprehend an individual when, based on treatment and individual observation, the professional believes them to be mentally ill.¹³ Orders to apprehend persons believed to be mentally ill are to be issued as soon as possible, especially when the person is a

4. O.C.G.A. § 30-5-4 (2007 & Supp. 2013).

5. Video Recording of House Proceedings, Mar. 11, 2015 (AM) at 1 hr., 36 min., 45 sec. (remarks by Rep. Wendell Willard (R-51st)), <http://www.gpb.org/lawmakers/2015/day-29> [hereinafter House Video Day 29].

6. *Id.*

7. *Id.*

8. *Financial Crimes Against the Elderly: 2013 Legislation*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2013-legis.aspx> (last visited Sept. 25, 2015).

9. GA. DEP'T OF HUMAN SERVS. DIV. OF AGING SERVS., *Just the Facts Fiscal Year 2009* 1 (2009), <http://www.elder-abuseca.com/docs/Georgia-Just-Facts-2009.pdf>.

10. See House Video Day 29, *supra* note 5, at 1 hr., 39 min., 42 sec. (remarks by Rep. Sharon Cooper (R-43rd)).

11. HB 72, as introduced, 2015 Ga. Gen. Assem.

12. HB 119, as introduced, 2015 Ga. Gen. Assem.

13. O.C.G.A. § 37-3-41 (2012 & Supp. 2015)

danger to themselves or others.¹⁴ Due to AIDS non-disclosure laws, such orders were often delayed for five to seven days if the subject of the order had HIV or AIDS.¹⁵ Representative Reeves explained that this effectively prevented those with HIV or AIDS from receiving the same protection as others who may be suicidal or at risk of harming others.¹⁶ Working with the Council of Probate Judges, the Department of Public Health, and various local AIDS advocacy groups, HB 119 was drafted to ensure orders to apprehend are processed safely and efficiently.¹⁷

The substance of Part II of the Act was originally introduced as Senate Bill (SB) 34.¹⁸ SB 34 was also inspired by a series of news stories detailing a recurring danger to Georgia citizens.¹⁹ Several children died or were injured in 2014 because they were accidentally left inside a hot, locked car.²⁰ While incidents occurred across the state, including in Tift and Sumter Counties,²¹ the most infamous incident was that of Justin Ross Harris.²² Harris, a Cobb County resident, was charged with murder after he left his son in a hot SUV for seven hours while he was at work.²³ The infant died as a result.²⁴

Georgia already had a general Good Samaritan law protecting individuals from civil liability who choose to provide emergency care to others.²⁵ However, despite beginning with the words “any person,”²⁶ the previous Good Samaritan law focused primarily on off-duty medical practitioners who happened to encounter emergency

14. Video Recording of House Proceedings, Feb. 18, 2015 at 1 hr., 8 min., 28 sec. (remarks by Rep. Bert Reeves (R-34th)), <http://www.gpb.org/lawmakers/2015/day-17> [hereinafter House Video Day 17].

15. *Id.*

16. *Id.*

17. *Id.*

18. SB 34, as introduced, 2015 Ga. Gen Assem.

19. Audio Recording of House Judiciary Fleming Subcommittee, Mar. 23, 2015 at 35 sec. (remarks by Sen. Greg Kirk (R-13th)) (on file with the Georgia State University Law Review) [hereinafter Subcommittee Recording].

20. *Id.*

21. *Id.*

22. Kathleen Baydala Joyner, *Ga.'s Car Break-In Rescue Bill Draws Heat*, FULTON CNTY. DAILY REP., Jan. 29, 2015, available at <http://www.dailyreportonline.com/printerfriendly/id=1202716513029#>.

23. *Id.*

24. *Id.*

25. O.C.G.A. § 51-1-29 (2000) (“Any person, including any person licensed to practice medicine and surgery . . . who in good faith renders emergency care at the scene of an accident or emergency to the victim or victims thereof without making any charge therefor shall not be liable for any civil damages as a result of any act or omission by such person in rendering emergency care . . .”).

26. *Id.*

situations.²⁷ Several members of the General Assembly wanted to expand the scope of the existing Good Samaritan law to specifically allow non-medical professionals to rescue children accidentally left in hot cars.²⁸ First-term Senator Greg Kirk (R-13th) reasoned that Georgia citizens would be more likely to intervene in such situations if they knew they would not be held liable for breaking a car window to get to a child.²⁹ Thus, Senator Kirk introduced SB 34 during the 2015 legislative session.³⁰

Bill Tracking of HB 72

Consideration and Passage by the House

Representative Wendell Willard (R-51st), Speaker Pro-Tempore Jan Jones (R-47th), Minority Leader Stacey Abrams (D-89th), Representative Sharon Cooper (R-43rd), Minority Whip Carolyn Hugley (D-136th), and Representative Penny Houston (R-170th) sponsored HB 72.³¹ The House read the bill for the first time on January 26, 2015.³² It read the bill for the second time on January 27, 2015.³³ Speaker David Ralston (R-7th) assigned the bill to the House Judiciary Non-Civil Committee.³⁴ The Committee favorably reported the bill on March 4, 2015.³⁵ The House read the bill for the third time on March 11, 2015.³⁶ The House passed the bill that same day by a vote of 169 to 0.³⁷

27. *Id.*; see also Joyner, *supra* note 22.

28. See Joyner, *supra* note 22.

29. Subcommittee Recording, *supra* note 19, at 4 min., 5 sec. (remarks by Sen. Greg Kirk (R-13th)).

30. SB 34, as introduced, 2015 Ga. Gen. Assem.

31. Georgia General Assembly, HB 72, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/72>.

32. State of Georgia Final Composite Status Sheet, HB 72, May 14, 2015.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Georgia House of Representatives Voting Record, HB 72 (Mar. 11, 2015).

Consideration and Passage by the Senate

Senator Renee Unterman (R-45th) sponsored HB 72 in the Senate.³⁸ The bill was first read in the Senate on March 13, 2015, and Lieutenant Governor Casey Cagle (R) referred it to the Senate Health and Human Services Committee.³⁹ The Senate Committee favorably reported HB 72 by substitute on March 27, 2015.⁴⁰ The Senate Committee made two additions to HB 72.⁴¹ First, the Committee added a provision protecting long-term care facilities and their owners, officers, employees, operators, or managers from civil liability arising due to the actions of another person who is convicted under Georgia's statute protecting elder persons.⁴² Second, the Committee added Part II to HB 72.⁴³ Part II amends Georgia's Good Samaritan Law to clarify that rendering "emergency care" includes rescuing an incapacitated or endangered individual from a locked motor vehicle.⁴⁴

HB 72 was read in the Senate for the second time on March 27, 2015.⁴⁵ It was read for the third time, and the Senate adopted the Committee substitute on March 31, 2015.⁴⁶ The Senate passed the Committee substitute to HB 72 by a vote of 50 to 0.⁴⁷ The Senate then sent the substituted bill back to the House for consideration.⁴⁸

Reconsideration and Passage by the House

On April 2, 2015, Representative Willard offered a floor amendment to the Senate Committee substitute containing the text of

38. Georgia General Assembly, HB 72, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/72>.

39. State of Georgia Final Composite Status Sheet, HB 72, May 14, 2015.

40. *Id.*

41. *See generally* HB 72 (SCS), 2015 Ga. Gen. Assem.

42. *Id.* § 1-2, p. 2, ln. 31-45; *see also* O.C.G.A. § 16-5-103(b) (Supp. 2015).

43. HB 72 (SCS), §§ 2-1-2-2, p. 11-12, ln. 359-79, 2015 Ga. Gen. Assem.

44. *Id.*; *see also* O.C.G.A. § 51-1-29(a) (2000 & Supp. 2015). Part II addresses the same issue SB 34, which never passed the House. *See* SB 34, as passed Senate, 2015 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, SB 34, May 14, 2015.

45. State of Georgia Final Composite Status Sheet, HB 72, May 14, 2015.

46. *Id.*

47. Georgia Senate Voting Record, HB 72 (Mar. 31, 2015).

48. *See id.*

HB 119 relating to disclosure of AIDS confidential information.⁴⁹ Although HB 119 passed the House and was favorably reported by the Senate Judiciary Committee, it never reached the Senate floor.⁵⁰ The floor amendment passed by a vote of 133 to 27.⁵¹ The House agreed to the Senate substitute as amended by the House by a vote of 143 to 21.⁵² The Senate agreed to the House amendment to the Senate Committee substitute by a vote of 46 to 1.⁵³ HB 72 was sent to Governor Nathan Deal (R) on April 9, 2015, and signed into law on May 5, 2015.⁵⁴

The Act

The Act is divided into three parts. Part I of the Act addresses elder and disabled abuse by clarifying definitions requiring mandatory reporting by financial institutions and investment companies, and creating a process for the Department of Community Health to conduct inspections of long-term care facilities.⁵⁵ Part IA of the Act allows for immediate disclosure of AIDS confidential information when processing orders to apprehend individuals suspected to be mentally ill.⁵⁶ Part II of the Act provides for legal immunity for those who render emergency care to individuals in a locked motor vehicle.⁵⁷

Part I

Part I contains the elder and disabled abuse prevention portion of the Act. Sections 1-1, 1-2, and 1-3 amend Article 8 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to protection of elder persons.⁵⁸ Section 1-1 amends Code section

49. State of Georgia Final Composite Status Sheet, HB 119, May 14, 2015; *see also* HB 72 (HFA), § 1A-1, p. 1, ln. 8–22, 2015 Ga. Gen. Assem.; HB 119, as introduced, 2015 Ga. Gen. Assem.

50. State of Georgia Final Composite Status Sheet, HB 119, May 14, 2015.

51. Georgia House of Representatives Voting Record, HB 72, Vote #384 (Apr. 2, 2015).

52. Georgia House of Representatives Voting Record, HB 72, Vote #385 (Apr. 2, 2015).

53. Georgia Senate Voting Record, HB 72 (Apr. 2, 2015).

54. State of Georgia Final Composite Status Sheet, HB 72, May 14, 2015.

55. 2015 Ga. Laws 598, §§ 1-1-1-13, at 599–607.

56. 2015 Ga. Laws 598, § 1A-1, at 607.

57. 2015 Ga. Laws 598, §§ 2-1-2-2, at 607–08.

58. *See* 2015 Ga. Laws 598, §§ 1-1-1-3, at 599.

16-5-100 by inserting a paragraph defining the term “mentally or physically incapacitated.”⁵⁹ The definition specifies that: “‘mentally or physically incapacitated’ means an impairment which substantially affects an individual’s ability” to provide personal protection, provide necessities, carry out activities of daily living, or manage his or her resources.⁶⁰

Section 1-2 amends Code section 16-5-103 by extending immunity from vicarious civil liability for a violation of Article 8 of Chapter 5 to an owner, officer, employee, operator, or manager of a long-term care facility.⁶¹ However, the individual immunity does not extend to occasions where the State may seek criminal or civil remedies under state law.⁶²

Section 1-3 of the Act moves the text of former Code section 16-5-104, providing that the Article is cumulative and supplemental to other state laws, to Code section 16-5-105.⁶³ Section 1-3 further replaces the text of Code section 16-5-104 with a venue provision.⁶⁴

Section 1-4 of the Act amends Code section 16-14-3, relating to definitions for the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, by adding violations of the elder abuse provisions located in Article 8, Chapter 5 of Title 16 to the list of charges constituting “racketeering activity.”⁶⁵

Section 1-5 of the Act amends “Article 1 of Chapter 8 of Title 17 of the [Code], relating to general provisions for trial”⁶⁶ Code section 17-8-1 is amended to allow for preferred scheduling in cases where the alleged victim is a disabled adult or elder person.⁶⁷ To receive preferred scheduling, the prosecution must notify the accused and, after a hearing within fourteen days, the court may determine

59. O.C.G.A. § 16-5-100(7.1)(A)–(D) (Supp. 2015).

60. *Id.*

61. O.C.G.A. § 16-5-103(b) (Supp. 2015).

62. *Id.*

63. O.C.G.A. § 16-5-105 (Supp. 2015); O.C.G.A. § 16-5-104 (Supp. 2014).

64. O.C.G.A. § 16-5-104(1)–(2) (Supp. 2015). “For the purpose of venue under this article, [a violation of Article 8] shall be considered to have been committed: (1) In any county in which any act was performed in furtherance of the violation; or (2) In any county in which any alleged victim resides.”
Id.

65. O.C.G.A. § 16-14-3(5)(A)(xlii) (Supp. 2015).

66. 2015 Ga. Laws 598, § 1-5, at 600.

67. O.C.G.A. § 17-18-1(b) (Supp. 2015).

that preferred scheduling is necessary provided the trial date remains at least thirty days after the hearing.⁶⁸

Sections 1-6 and 1-7 of the Act amend “Chapter 5 of Title 30 of the [Code], relating to [the] protection of disabled adults and elder persons. . . .”⁶⁹ Section 1-6 amends Code section 30-5-3, relating to definitions,⁷⁰ by clarifying and adding several miscellaneous terms.⁷¹

Section 1-7 amends Code section 30-5-4 in three primary ways. First, it requires investment companies and financial institutions to report suspected exploitation of disabled adults or elder persons to an adult protection agency and to an appropriate law enforcement agency or prosecuting attorney.⁷² Next, Section 1-7 removes an exemption from reporting suspected exploitation where a disabled adult or elder person is a resident of a long-term care facility.⁷³ Finally, the Section requires adult protection agencies, when receiving a report of suspected abuse or exploitation directly, to make a reasonable determination as to whether a crime has been committed before notifying an appropriate law enforcement agency or prosecuting attorney.⁷⁴

Sections 1-8 and 1-9 of the Act amend Chapter 2 of Title 31 of the Code, relating to the Department of Human Resources.⁷⁵ Section 1-8 adds individuals convicted of a felony for owning or operating an unlicensed personal care home to the list of persons prohibited from owning a facility under a Georgia license that provides care to persons.⁷⁶ Section 1-9 adds a Code section providing for a procedure and guidelines for the Commissioner of Community Health to obtain and execute inspection warrants.⁷⁷

Sections 1-10, 1-11, 1-12, and 1-13 of the Act amend “Chapter 5 of Title 31 of the [Code], relating to administration and enforcement”⁷⁸ Sections 1-10, 1-11, and 1-12 clarify language to

68. *Id.*

69. 2015 Ga. Laws 598, § 1-6, at 600.

70. *Id.*

71. See O.C.G.A. § 30-5-3 (2007 & Supp. 2015).

72. O.C.G.A. § 30-5-4(a)(1)(B) (2007 & Supp. 2015).

73. O.C.G.A. § 30-5-4(b)(1)(B) (2007 & Supp. 2015).

74. O.C.G.A. § 30-5-4(b)(1)(A) (2007 & Supp. 2015).

75. See 2015 Ga. Laws 598, §§ 1-8–1-9, at 604–06.

76. See O.C.G.A. § 31-2-9(a)(2)(M) (2012 & Supp. 2015).

77. O.C.G.A. § 31-2-13 (Supp. 2015).

78. 2015 Ga. Laws 598, § 1-10, at 606.

refer to the Department of Public Health, rather than the Department of Community Health.⁷⁹ Section 1-13 amends Article 2 of Chapter 5 of Title 31 by removing a provision that excludes evidence obtained through an inspection warrant in a criminal prosecution.⁸⁰

Part IA

Part IA (Section 1A-1) of the Act adds a subparagraph to Code section 24-12-21.⁸¹ This provision allows disclosure of AIDS confidential information if the person identified by the information “[i]s suspected of being mentally ill and is the subject of an order [to apprehend] when the court issuing [the] order finds in an *in camera* hearing by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means.”⁸² The language of the provision is identical to a catchall provision allowing a superior court to order the disclosure of AIDS confidential information after an *in camera* hearing.⁸³ The subparagraph also provides guidance for the court in deciding whether a compelling need warrants the disclosure.⁸⁴

Part II

Part II of the Act amends the Code in two ways. Section 2-1 amends Code section 51-1-29 (the Good Samaritan Law) by clarifying that “emergency care” rendered at the scene of an accident includes “the rescue or attempted rescue of an incapacitated or

79. See O.C.G.A. § 31-5-10(b) (2012 & Supp. 2015); O.C.G.A. § 31-5-20 (2012 & Supp. 2015); O.C.G.A. § 31-5-21 (2012 & Supp. 2015).

80. O.C.G.A. § 31-5-24 (2012 & Supp. 2015).

81. O.C.G.A. § 24-12-21(s)(1)(C) (Supp. 2015).

82. *Id.*

83. Compare *id.*, with O.C.G.A. § 24-12-21(s)(2) (2013 & Supp. 2015).

84. O.C.G.A. § 24-12-21(s)(1)(C) (Supp. 2015):

In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this subparagraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure.

Id.

endangered individual from a locked motor vehicle.”⁸⁵ Persons providing such care free of charge may not be held liable for any civil damages as a result of their care.⁸⁶ Finally, Section 2-2 establishes the same conduct as falling under the justification defense to criminal prosecution.⁸⁷

Analysis

Intended Consequences

Part I

The Act has no single purpose because it is a combination of three different bills. Part I of the Act was referred to as a “clean up” bill during floor debates.⁸⁸ Most of the provisions were intended to further protect the elderly by modifying and closing gaps to HB 78, which passed in 2013.⁸⁹ More specifically, the Act is intended to combat the occurrence of elder financial abuse, which increased by 65% from 2008 to 2012.⁹⁰

One provision provides jurisdictional venue in the county where an elderly victim of financial exploitation resides, rather than the location of the fraud or incident.⁹¹ This better allows an elderly victim to attend court proceedings in cases where the exploitative acts occurred far away.⁹² By increasing court access for elderly victims of abuse and exploitation, more wrongdoers will be punished

85. O.C.G.A. § 51-1-29(b) (Supp. 2015).

86. O.C.G.A. § 51-1-29(a) (2000 & Supp. 2015).

87. O.C.G.A. § 16-3-20(5) (2011 & Supp. 2015).

88. Video Recording of Senate Proceedings, Mar. 31, 2015 (PM 1) at 1 hr., 43 min., 25 sec. (remarks by Sen. Renee Unterman (R-45th)), <http://www.gpb.org/lawmakers/2015/day-39> [hereinafter Senate Video].

89. *HB 72 Announced Today: A Bill to Protect Our Seniors*, GA. WATCH (Jan. 16, 2015), <http://www.georgiawatch.org/hb-72-announced-today-a-bill-to-protect-our-seniors/> [hereinafter GA. WATCH]; see also Andy Miller, *Bill Would Tighten State’s Elder Abuse Law*, GA. HEALTH NEWS (Jan. 16, 2015), <http://www.georgiahealthnews.com/2015/01/bill-tighten-states-elder-abuse-law/> (“We are on the leading edge in fighting elder abuse,” said [Rep. Wendell] Willard.”).

90. GA. WATCH, *supra* note 89.

91. O.C.G.A. § 16-5-104 (Supp. 2015).

92. See GA. WATCH, *supra* note 89. The GBI Director, Vernon Keenan, explained: “Let’s say an 80 year old resident of Brookdale [Senior Living] outside the city has their funds stolen from a location in Fulton, are we really going to make that 80 year old person travel for a series of hearings?” *Id.*

and more victims can recover financially.⁹³ Another provision broadens the class of mandatory reporters of elder abuse by adding “financial institutions,” such as banks, and “investment companies,” such as brokers and financial advisors.⁹⁴ Finally, the Act broadly expands the power of the “commissioner of community health” to obtain and execute inspection warrants for personal care facilities.⁹⁵ This includes allowing information that is collected during inspections and complaint investigations to be used as evidence in a criminal trial, which is instrumental in deterring and punishing those facilities that maintain unlawful practices.⁹⁶

Part IA

Part IA of the Act streamlines the process for the apprehension of mentally ill individuals who also have AIDS and may be a possible danger to themselves or others.⁹⁷ While protection from disclosure of AIDS confidential information remains an important priority, in this case, the protection turned into a potentially life-threatening hindrance.⁹⁸ Before HB 72, disclosure to law enforcement that a mentally ill subject of an order to apprehend had AIDS required a hearing in a superior court.⁹⁹ According to Representative Bert Reeves (R-34th), this process delayed the apprehension by five to seven days.¹⁰⁰ By allowing this identical hearing to take place in the same court—typically a probate court for adults and juvenile court for minors—that issues the order, proponents assert that valuable time will be saved.¹⁰¹ Based on the broad support for HB 119,

93. *See id.*

94. O.C.G.A. § 30-5-3(11) (2007 & Supp. 2015). An “investment company” includes individuals and companies that engage in securities transactions, issue securities, or advise others as to the value of securities, investing in, purchasing, or selling securities. *Id.*

95. O.C.G.A. § 31-2-13 (Supp. 2015).

96. *See Miller, supra* note 89. These provisions are in response to cases like Alzheimer’s Care of Commerce, a licensed facility where seventeen employees were charged with assaulting and illegally restraining patients. *Id.* The Georgia Bureau of Investigation raided the facility in 2013, but the abuse could have been uncovered sooner with more regular inspections. *Id.*

97. *See House Video Day 17, supra* note 14, at 1 hr., 8 min., 28 sec. (remarks by Rep. Bert Reeves (R-34th)).

98. *See id.*

99. O.C.G.A. § 24-12-21(s)(2) (2013 & Supp. 2015).

100. House Video Day 17, *supra* note 14, at 1 hr., 8 min., 28 sec. (remarks by Rep. Bert Reeves (R-34th)).

101. *Id.*; *see also* O.C.G.A. § 24-12-21(s)(1)(C) (Supp. 2015).

including AIDS advocacy groups and the Council of Probate Judges, this Act likely sets the proper balance between privacy and efficiency.¹⁰²

Part II

Part II of the Act expands the Good Samaritan law.¹⁰³ While the prior version of the Good Samaritan law contained broad language, Senator Greg Kirk (R-13th) reasoned that specific language granting immunity to those who saved children from hot cars would motivate even the most cautious Good Samaritan to get involved.¹⁰⁴ The Senator stated, “[H]ow many times have you heard the neighbors screaming, but [you think] ‘I don’t want to get involved,’ but domestic violence is probably taking place. We certainly want to remove any barrier that would stop any citizen . . . from [] acting.”¹⁰⁵ Senator Kirk also introduced SB 34 to “raise awareness.”¹⁰⁶ Although less than forty children die in the United States each year because they were left in hot cars,¹⁰⁷ Senator Kirk felt these deaths were a result of a “distracted society.”¹⁰⁸

However, the Act may not change the previous Good Samaritan law in any meaningful way. Representative Barry Fleming (R-121st) points out that because the prior law covered “any person, who in good faith renders emergency care,” Part II of the Act is essentially unnecessary legislation.¹⁰⁹ SB 34, as introduced by Senator Kirk, provided more comprehensive protection for Good Samaritans who act in good faith in attempting to rescue a child locked in a motor vehicle.¹¹⁰ Similarly, SB 35 could have provided a real deterrent to leaving children in motor vehicles by classifying the act as third-degree cruelty to children.¹¹¹ The Senate Judiciary Non-Civil

102. See House Video Day 17, *supra* note 14, at 1 hr., 8 min., 28 sec. (remarks by Rep. Bert Reeves (R-34th)).

103. See O.C.G.A. § 51-1-29(b) (Supp. 2015).

104. Joyner, *supra* note 22.

105. Subcommittee Recording, *supra* note 19, at 3 min., 35 sec. (remarks by Sen. Greg Kirk (R-13th)).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* at 4 min., 15 sec. (remarks by Rep. Barry Fleming (R-121st)).

110. See SB 34, as introduced, 2015 Ga. Gen. Assem.

111. SB 35, as passed Senate, 2015 Ga. Gen. Assem.

Committee substitute to SB 35 passed the Senate unanimously,¹¹² but it failed to reach the House floor.¹¹³

Further, while the Act may raise awareness, it is unclear whether such awareness is even necessary. Senator Kirk could not point to a specific instance in which a passer-by failed to retrieve a child from a dangerously hot car because he or she was afraid of being sued for property damage.¹¹⁴ Indeed, Steven Kyle, a Georgia insurance defense attorney, points out that because a broken car window only costs a few hundred dollars to replace, the stakes are quite low even if a rescuer *did* believe he or she would be sued as a result of breaking a car window to save a child.¹¹⁵ Further, damage to a car window would likely be covered under the car owner's insurance policy.¹¹⁶

Unintended Consequences

While leaving a child in a car for an extended period of time is dangerous in certain conditions, the Act could motivate passers-by to intervene in situations where no child is in danger. David DeLugas, Executive Director of the National Association of Parents and practicing attorney in Cobb County, argues that many aware and safety-conscious parents leave their children in a car for a few minutes while the parents run into, for example, the grocery store or bank.¹¹⁷ Some of these parents have returned only minutes later to find a concerned stranger has called the police to rescue children who were never in danger.¹¹⁸

Because the Act alleviates any fear of liability passers-by may have, strangers may be more likely to get involved in such situations.¹¹⁹ Further, DeLugas stated that the Act may operate in unintended ways: strangers who unnecessarily intervene and break a

112. Georgia Senate Voting Record, SB 35 (Mar. 11, 2015).

113. State of Georgia Final Composite Status Sheet, SB 35, May 14, 2015.

114. Subcommittee Recording, *supra* note 19, at 3 min., 40 sec. (remarks by Sen. Greg Kirk (R-13th)).

115. Joyner, *supra* note 22.

116. *Id.*

117. *See id.*

118. *Id.*

119. *See id.*

car window to save a child who was never in danger may use Part II of the Act to protect themselves from liability if they accidentally hurt the child while breaking a window.¹²⁰ In such a situation, the Act could protect over-enthusiastic vigilantes, instead of the children the Act intends to protect.¹²¹

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120. *Id.*

121. *See Joyner, supra* note 22.

