

Unlicensed Care Home Investigations

The purpose of this paper will be to define an unlicensed care home and to give some suggestions of how to work a criminal investigation in reference to an unlicensed care home.

Definition

OCGA § 31-7-12.1 (a) defines “unlicensed personal care home” as a facility that is unlicensed (and not exempted) and which is providing personal care services AND is operating as a personal care home -OR- The facility holds itself out as or represents that it does the above -OR- The facility represents itself as a licensed personal care home.

Personal care services means giving or assisting with medication or other essential activities of daily living, like eating, bathing, grooming, dressing, or toiletry. It does NOT include medical, nursing, or health services.

Personal care home means any dwelling, both for profit and nonprofit, which provides or arranges for housing, food service, AND one or more personal services for 2 or more adults who are not related to the owner or administrator by blood or marriage.

Personal Care Home Crimes

Personal care homes must be licensed by the Department of Community Health, O.C.G.A. § 31-7-12, and O.C.G.A. § 31-7-3. Effective July 1, 2012; operating a personal care home without a license is a misdemeanor, O.C.G.A. § 31-7-12(b). A second violation will be a felony.

Effective July 1, 2014, O.C.G.A. § 31-7-12.1(g) states that any person who owns or operates a personal care home in violation of O.C.G.A. § 31-7-12(b) shall be guilty of a misdemeanor unless such violation is in conjunction with abuse, neglect, or exploitation as defined in Code Section 30-5-3, in which case such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years. A second conviction shall be a felony punishable by imprisonment for not less than one nor more than ten years.

The officer may be faced with the public or other officers who have not been educated on this issue and believe that these crimes are just code enforcement issues. The aforementioned code sections show that they are not code enforcement problems and are crimes.

The following information is specific to OCGA § 16-5-101, OCGA § 16-5-102 and OCGA § 16-5-103 – all new statutes as of 7/1/13 as a result of HB78:

16-5-101: **Neglect to a disabled adult, elder person, or resident**

- a) the basic crime (4 elements)
 - 1) guardian or person supervising welfare or person with immediate charge, control, or custody of
 - 2) elder person -OR- disabled person -OR- resident
 - 3) willfully deprives of
 - health care, -OR-
 - shelter, -OR-
 - necessary sustenance
 - 4) to the extent that health or well-being is jeopardized

There are some exceptions to this abuse code section as described below:

Exceptions (i.e., the crime shall **NOT** apply to):

- b) physician or healthcare facility employees acting IN GOOD FAITH
 - a. within the scope of their employment
-OR-
 - b. in accordance with a living will, durable power of attorney for health care, advanced directive for health care, order not to resuscitate,
-OR-
 - c. the instructions of the patient or patient's lawful surrogate decision maker
- c) those providing treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the practices and WRITTEN NOTARIZED CONSENT of person

16-5-102: Exploitation and intimidation of disabled adults, elder persons, and residents; obstruction of investigation

Exploitation: (3 elements, but many different ways)

- 1) knowingly and willfully
- 2) exploits (defined in 16-5-100)
 - a. illegally or improperly
 - b. use a disabled or elder adult OR that person's resources
 - c. through
 - i. undue influence
 - ii. coercion
 - iii. harassment
 - iv. duress
 - v. deception
 - vi. false representation
 - vii. false pretense
 - OR-
 - viii. other similar means
 - d. for one's own or another's profit or advantage
- 3) elder person -OR- disabled person -OR- resident

Abuse: (3 elements, but many different ways)

- 1) willfully
- 2) one of six bad acts

- a. physical pain
 - b. physical injury
 - c. sexual abuse
 - d. mental anguish
 - e. unreasonable confinement
 - f. deprives of essential services (defined in 16-5-100)
- 3) elder person -OR- disabled person -OR- resident

Intimidation

- a. threaten, intimidate or ATTEMPT to intimidate
- b. 1) elder person -OR- disabled person -OR- resident, who is subject of report of
 - i. need for protective services
 - ii. abuse or exploitation in a long-term care facility -OR-
- 2) Any other person cooperating with investigation of anything in 16-5-102

Obstruction

- c. willfully knowingly obstruct OR in any way impede
- d. investigation conducted into a report of
 - 1) need for protective services of elder or disabled person -OR-
 - 2) abuse or exploitation in a long-term care facility

A list of many possible crimes that can be charged in connection with these investigations will be attached to this paper.

Types of Abuse, Neglect and Exploitation

- 1) Physical Abuse - The most visible form of At Risk Adult abuse is physical abuse. Physical abuse is defined as the willful infliction of physical pain, injury, mental anguish, unreasonable confinement, or the willful deprivation of services that are essential to a disabled adult¹ or elder person.² In physical abuse cases, there will be visible signs such as multiple bruises, cuts, and possibly broken bones or burns. In this type of case, it is common for the victim to feel reluctant to disclose the physical abuse for fear of alienating, and/or loyalty to the family members or caregivers who are the authors of the abuse.
- 2) Withholding of Essential Services - The law requires that certain essential services be provided to At Risk Adults, including social, medical, psychiatric or legal services necessary to safeguard the disabled adult's or elder person's rights and resources and to maintain the physical and mental well-being of such person. These essential services also include, but are not limited to, the provision of medical care for physical or mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection for health and safety hazards.
- 3) Financial Exploitation - Financial exploitation involves the illegal or improper use of a disabled adult's or elder person's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for another's profit or

¹ A person 18 years of age or older who is not a resident of a long-term care facility, but who is mentally or physically incapacitated or has Alzheimer's disease or dementia. O.C.G.A. § 30-5-3.

² A person 65 years of age or older who is not a resident of a long-term care facility. O.C.G.A. § 30-5-3.

advantage. Every year thousands of people lose all or part of their life savings to dishonest family members and caregivers. Although many of these incidents occur within a family setting, they are crimes that are frequently dismissed as “civil matters.” At Risk Adults are often convinced or coerced into signing blank checks, transferring titles to their homes and vehicles, or surrendering ownership of other valuable property to others. This constitutes financial exploitation. Victims of such financial exploitation crimes are reluctant to report them or even to cooperate in investigations of such crimes because they fear that a report would alert family members who might interfere even more with their independence. In other cases the At Risk Adult may be embarrassed at having been victimized.

- 4) Neglect - Another form of At Risk Adult abuse is neglect. Neglect is defined as the absence or omission of essential services to the degree that it harms, or threatens with harm, the physical or emotional health of a disabled adult or elder person. There may be cases of self-neglect wherein the person does not have sufficient mental faculties or physical ability to provide for their own care. In many such instances, however, a family member or other caregiver purposefully neglects a person. The neglect may become obvious from soiled clothing and linens; bedsores; weight loss from poor nutrition or from no food at all. It may result from the withholding of medications or from over-medicating the victim to make the person more controllable.
- 5) Sexual Abuse - A particularly egregious form of abuse is sexual abuse. These types of crimes are all too common. Many offenders consider group homes and other care facilities as target-rich environments. Frequently, in such cases there are no witnesses other than the victim, who is either unable to report the crime or assist in the investigation.

Investigative Strategies

It is critical for each responding officer to understand the importance of the evidence at the scene. The officer must document not only the condition of the scene, but also the physical condition of the victim, by using video recordings and/or photographs. The protection of these victims requires developing a quality criminal case investigation and report for a successful criminal prosecution. A combination of laws and use of a multi-disciplinary investigation provide the best way to assist the prosecutor. In addition to photographs and video, officers and investigators should consider collecting non-traditional forms of evidence, such as soiled linens, and documenting items that are absent, such as an empty refrigerator, in neglect cases. Other non-traditional forms of evidence include: insect infestations; piles of unwashed clothing; the absence of essential utilities such as heat and running water; external padlocks used to lock cabinets containing food or interior/exterior doors; and “slop buckets” for collecting human waste. Prosecutors can use such evidence to successfully prosecute these crimes.

Law enforcement agencies should utilize deconfliction protocols when investigating these cases. In this context, utilizing deconfliction allows law enforcement to become aware of other criminal investigations regarding the same suspects. For example, a person operating an unlicensed group home who is neglecting the home’s occupants may be operating other homes in other jurisdictions.

Training is absolutely critical for the proper recognition of crimes against At Risk Adults, as it will ensure a thorough investigation leading to a successful prosecution. As with many crimes that few law enforcement officers have experience with, it is extremely important that they have the proper training. It is imperative that law enforcement investigative personnel must receive critical training so that investigators understand the complexities of At Risk Adult abuse and neglect investigations. It is critical for investigators to recognize that caregivers and family members are often the perpetrators of such crimes. Often in a police investigation the victim has visible signs of their abuse. Moreover, in cases involving At Risk Adults, crimes such as neglect, exploitation, deprivation of essential services, identity theft, and fraud can be just as devastating as a physical attack. Reports of such crimes must be scrutinized and examined with the same intensity, tenacity and resources as an assault and battery, or other crimes of violence. Training must include basic investigative techniques related to At Risk Adults. It must also introduce other closely related topics such as financial investigations, fraud investigations, and special issues related to testifying in such cases.

If the officer is only able to establish a misdemeanor case against the offender for running an unlicensed care home, then it will be important to go ahead and make that arrest and thoroughly document what is seen at the time of that arrest. This information, together with interviews of the residents, and other information that can be gathered from agencies associated with the Georgia Department of Community Health, may then possibly be used to make a felony arrest in the future.