

GEORGIA PANDEMIC INFLUENZA BENCHBOOK



DEVELOPED BY
THE ADMINISTRATIVE OFFICE OF THE COURTS OF GEORGIA
AND THE
JUDICIAL COUNCIL OF GEORGIA



JUDICIAL COUNCIL OF GEORGIA

The Honorable Chief Justice Leah Ward Sears, Chairperson, Supreme Court of Georgia
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The Honorable Bill Clifton, Municipal Court of Forsyth – Ex Officio

David L. Ratley, Director, Administrative Office of the Courts

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Acknowledgements:

In December 2006, the Judicial Council of Georgia, upon the recommendation of Chief Justice Leah Ward Sears, created the Court Emergency Management Committee with the purpose of developing measures to assist the courts in providing access to justice during a public health emergency such as pandemic influenza. The Committee held its first meeting in March of 2007 and by the end of the year had created both a *Pandemic Influenza Continuity of Operations Plan Appendix* for courts to annex to their existing court emergency plans; and a *Pandemic Influenza Benchbook* for the trial court judges of Georgia. The COOP Appendix developed by the Committee was reviewed by the National Center for State Courts and is available through the Administrative Office of the Courts of Georgia. The Committee, under the leadership of its Chair, Justice Harold Melton, was able to enlist the *pro bono* services of legal experts from several prestigious law firms specializing in public health law to author the pertinent sections of the Benchbook. The Judicial Council also acknowledges Director David Ratley of the Administrative Office of the Courts of Georgia for his commitment to provide the talented staff and resources necessary to assist the great work of this Committee. The Council wishes to specially acknowledge the two staff members of the AOC who continue to provide exceptional support to the Committee: Bob Bray, Associate Director of Planning and Research; and Kelly McQueen, Policy Analyst.

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Members of the Court Emergency Management Committee:

Hon. Harold D. Melton, Chair	Justice, Supreme Court of Georgia
Therese S. Barnes	Clerk, Supreme Court of Georgia
Hon. Betty B. Cason	Judge, Carroll County Probate Court
Skip Chesshire	Cobb County Superior Court Administrator
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L. Tom Gunnels, Jr.	10 th District Court Administrator
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Hon. Herbert E. Phipps	Judge, Court of Appeals
Michael B. Terry	Bondurant, Mixson & Elmore LLP, Atlanta Bar Association Liaison
Dr. Myra Tolbert	Education Staff Specialist, Department of Education

Staff:

Bob Bray Associate Director, Administrative Office of the Courts
Kelly McQueen Policy Analyst, Administrative Office of the Courts

Committee Consultants:

Tara Adyanthaya, JD Attorney, formerly with King & Spalding
Charlie English Director, GEMA
Amy Feuss, JD General Counsel, DOHR/Division of Public Health
Patrick O’Neal, MD DOHR, Division of Public Health

Authors:

Josh Becker, JD Alston & Bird, LLP
Sara Deskins Georgia State University School of Law (Summer Associate)
Michael B. Terry, JD Bondurant, Mixson & Elmore LLP
Jeb Butler University of Georgia School of Law (Summer Associate)
Naveen Ramachandrappa University of Georgia School of Law (Summer Associate)
Tara Adyanthaya, JD Formerly with King & Spalding (currently a Masters Degree
Candidate in Bioethics at University of Pennsylvania)
Katie Bates, JD University of Georgia School of Law (Summer
Associate)
Richard L. Shackelford, JD King & Spalding
Keri F. Conley, JD Nelson Mullins Riley & Scarborough
Lucas Westby Georgetown University School of Law (Summer Associate)
Amy Feuss, JD General Counsel, Department of Human Resources,
Division of Public Health
Therese S. Barnes, JD Supreme Court of Georgia
Tia C. Milton, JD Supreme Court of Georgia
Cynthia Clanton, JD General Counsel, Administrative Office of the Courts of
Georgia

Editors:

Cynthia Clanton, JD General Counsel, Administrative Office of the Courts
Julius Tolbert, JD Assistant Director of Legal, Administrative Office of the
Courts
Lisa Blehm Legal Administrative Assistant, Administrative Office of
the Courts
Kevin Reardon Legal Intern, Administrative Office of the Courts, Georgia
State University School of Law

Georgia Pandemic Influenza Benchbook

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Preface

In November 2005, the President released the *National Strategy for Pandemic Influenza*. The strategy has three critical goals. The third of these three goals is most relevant for the purposes of the Georgia State Courts.

According to the President:

Our strategy is designed to meet three critical goals: first, we must detect outbreaks that occur anywhere in the world; second, we must protect the American people by stockpiling vaccines and antiviral drugs, and improve our ability to rapidly produce new vaccines against a pandemic strain; and third, we must be ready to respond at the federal, state and local levels in the event that a pandemic reaches our shores (emphasis added).¹

Frequency and Impact of an Influenza Pandemic:

Predicting when and where an influenza pandemic will occur is problematic. However, history provides some guidance on the frequency of the occurrences of pandemic influenza. Based on the historical occurrences, the frequency of an influenza pandemic is estimated by public health officials to be approximately every 35 years. The last influenza pandemic occurred in 1968.²

The impact of an influenza pandemic has the potential to be unlike any other emergency event, according to University of Minnesota public health expert Michael Osterholm. Osterholm, who helped draft the national strategy, advises that millions of Americans could be sickened and at least two million Americans could be killed in flu pandemic. He states:

We can predict now twelve to eighteen months of stress, of watching loved ones die, of potentially not going to work, of wondering if you're going to have food on the table the next day. Those are all things that are going to mean that we're going to have to plan unlike any other kind of crisis that we've had in literally the last 80-some years in this country.³

Additionally, national health experts advise that communities will be required to shut down sporting events and other public gatherings to minimize the spread of infection. The situation will also require local communities to treat thousands of sick patients in improvised hospitals and deal with the grisly task of handling an unprecedented number of bodies.

¹ United States. White House Office. Homeland Security Council. *National Strategy for Pandemic Influenza*. Nov. 2005.

² *Emergency Preparedness in the State Courts*. September 12, 2007 Draft p. 26.

³ Osterholm, Michael. Interview with Susan Dentzer. *The News Hour* with Jim Lehrer. 1 Nov. 2005. Public Broadcasting Service. Georgia Public Radio, Atlanta.

The horrific images described by the experts seem to be acknowledged by the U.S. Department of Health and Human Services. The *HHS Pandemic Plan*, issued in November 2005, states the characteristics of an influenza pandemic that must be considered in strategic planning are:

- The ability of the virus to spread rapidly worldwide;
- The fact that people may be asymptomatic while infectious;
- Simultaneous or near-simultaneous outbreaks in communities across the U.S., thereby limiting the ability of any jurisdiction to provide support and assistance to other areas;
- Enormous demands on the health care system;
- Delays and shortages in the availability of vaccines and antiviral drugs; and
- Potential disruption of national and community infrastructures including transportation, commerce, utilities and public safety due to widespread illness and death among workers and their families and a concern about on-going exposure to the virus.⁴

The World Health Organization (WHO) has developed a six phase categorization to describe the state of a pandemic. A table (see Table One) of the WHO pandemic phases is provided. At the date of the publication of this strategy, the WHO advises the current situation is listed at phase three.

⁴ United States. Health and Human Services. [HHS Pandemic Influenza Plan](#). Nov. 2005

**Table One:
Pandemic Phases Developed by the
World Health Organization (WHO)⁵**

**Status at Publication:
Phase 3**

WHO Global Influenza Preparedness Plan. World Health Organization. Switzerland:
Department of Communicable Disease Surveillance and Response, 2005.

Interpandemic period	
Phase 1	No new influenza virus subtypes have been detected in humans. An influenza virus subtype that has caused human infection may be present in animals. If present in animals, the risk of human infection or disease is considered to be low
Phase 2	No new influenza virus subtypes have been detected in humans. However, a circulating animal influenza virus subtype poses a substantial risk of human disease.
Pandemic alert period	
Phase 3	Human infection(s) with new subtype but no human-to-human spread, or at most rare instance of spread to a close contact.
Phase 4	Small cluster(s) with limited human-to-human transmission but spread is highly localized, suggestion that the virus is not well adapted to humans.
Phase 5	Larger cluster(s) but human-to-human spread still localized, suggesting that the virus is becoming increasingly better adapted to humans but may not yet be fully transmissible (substantial pandemic risk).
Pandemic period	
Phase 6	Pandemic: increased and sustained transmission in general population.
Postpandemic period	
	Return to interpandemic period.

Notes: The distinction between **phases 1** and **2** is based on the risk of human infection or disease resulting from circulating strains in animals. The distinction is based on various factors and their relative importance according to current scientific knowledge. Factors may include Pathogenicity in animals and humans, occurrence in domesticated animals and livestock or only in wildlife, whether the virus is enzootic or epizootic, geographically localized or widespread, and other scientific parameters. The distinction among **phases 3, 4,** and **5** is based on an assessment of the risk of a pandemic. Various factors and their relative importance according to current scientific knowledge may be considered. Factors may include rate of transmission, geographical location and spread, severity of illness, presence of genes from human strains (if derived from an animal strain), and other scientific parameters.

⁵ WHO Global Influenza Preparedness Plan. World Health Organization, Switzerland: Department of Communicable Disease Surveillance and Response, 2005.

Georgia Department of Human Resources Division of Public Health

The response to these potentially horrific events in Georgia will be guided by the Georgia Department of Human Resources, Division of Public Health (DHR/DPH).

Unfortunately, planning considerations developed by the DHR/DPH also paint a dire image with only limited resources being able to be brought to bear by the DHR/DPH in an influenza pandemic.

There is no scientific way to know the extent, impact, and duration of a possible influenza pandemic. Numbers from official sources can vary widely. However, based on information provided by the DHR/DPH, the following are the current planning considerations for an influenza pandemic at the date of publication.

- The virus will spread rapidly before a vaccine can be produced;
- The pandemic will last between 18 months and 3 years;
- The pandemic will occur in two or three waves;
- Each episode will last from 6 – 8 weeks;
- The virus is infectious without the person showing any symptoms;
- Once symptoms occur, an infected person may die within 48 hours;
- Possibly 40 % of the population will either die or contract the disease;
- There is no way to produce adequate supplies of vaccine until the virus has mutated;
- It takes time for the vaccines to be produced, and the first wave of influenza will be ending;
- Limited supplies of Tami flu vaccine are available and will be rationed according to a must-need, basis;
- No mutual aid will be available from other states or the federal government; the emergency must be handled at the local level;
- Emergency measures will include isolation, quarantine, cessation of all public gatherings;
- Total deaths in Georgia could be between 2,670 and 6,210

Estimated morbidity and mortality during a pandemic in Georgia from the Pandemic Influenza Preparedness and Response Standard Operating Plan DHR/DPH (PISOP)

Georgia	
Infected	Up to 6 million
Clinically Ill	0.6 - 1.14 million
Outpatient Care	540,000 – 1.26 million
Hospitalization	9,420 – 21,990
Deaths	2,670 – 6,210

- As high as 14 percent of Georgia’s population could become clinically ill

- Approximately 2 percent of those who become clinically ill will need hospitalization.
- In addition to the 35 percent who become ill, an additional 30 to 50 percent will be infected but will be asymptomatic.
- The incubation period is estimated to be between 1 and 8 days.
- Georgia will have available only a limited number of doses of Oseltamivir (Tamiflu), the only effective antiviral currently available. The current DOH policy is to use these limited doses as a means to attempt to save those lives in the greatest danger.
- While vaccination is the primary method of preventing influenza, six to eight months may be needed to develop a vaccine once the virus has been identified.
- The primary means available to the DOH to slow the incidence of disease during an influenza pandemic include:
 - Isolation of those infected;
 - Quarantine of those exposed to influenza;
 - Restrictions in travel for persons ill or exposed to influenza; and
 - School and work closures, and cancellation of public gatherings.

For more information, visit: www.pandemicflu.gov;
www.whitehouse.gov/homeland/pandemic-influenza-implementation.html;
www.cdc.gov/flu/avian/outbreaks/current.htm;
<http://health.state.ga.us/pandemicflu/index.asp>

Strategic Goals in the Georgia State Courts:

Even under the dire circumstances previously described, the strategic goals for emergency preparedness efforts in the Georgia State Courts still apply. These strategic goals are:

- We must deal with crises in a way that protects the health and safety of everyone at the court facilities; and
- We must “keep the courts open” to ensure justice for the people.

Scenario for the Georgia State Courts:

The pandemic scenario is distinct from other emergency scenarios, hurricanes or tornadoes for example, which might impact the Georgia State Courts. In addition to the previous dire description, the pandemic scenario specifically for the Georgia state Courts is likely to include:

- A significant increase in emergency matters and case filings generated due to issues associated with quarantine and isolation of individuals by state and local public health officials may occur;
- Of the judges, attorneys, parties, clerks and deputy clerks, sheriffs and deputy sheriffs, court administrators and staff, state and local public health officials,

- jurors, etc., necessary to perform the mission essential functions, one-third will not be available due to illness or death;
- Face-to-face contact between judges, attorneys, parties, clerks and deputy clerks, sheriffs and deputy sheriffs, court administrators and staff, state and local public health officials, jurors, etc., necessary to perform mission essential functions may be dramatically limited or unavailable;
 - Court facilities, court infrastructure, public utilities, residences, etc., will all, more than likely, be physically undamaged; and
 - While physically undamaged, facilities, infrastructure, utilities, and services may be impacted by lack of adequate staffing due to isolation, quarantine, illness, or death of necessary staff to keep operations running.

Tactical Objectives for the Georgia State Courts:

Clearly under the situation described above, court operations may be dramatically impacted for potentially an extended period of time. According to Osterholm, this period of time could be 12 to 18 months. Given the extent and duration of the impact, both a short-term tactical objective and a long-term tactical objective are required.

Both the short-term and long-term tactical objectives are augmentations of existing continuity of operations plans (COOP). These augmentations are designed to address the unique situation brought about by an influenza pandemic and may or may not apply to other emergency situations. As an example, descriptions of these tactical objectives are provided below. Also, a flowchart depicting the full process for responding to an influenza pandemic is provided in Appendix A.

Short-Term Tactical Objective (Up to 90 Days)

In the first 90 days of COOP activation due to the outset of an influenza pandemic, the tactical objectives are to:

1. Have the capacity to perform all mission essential functions, as should be currently defined in each courts' continuity of operations plans (COOP); and
2. Have the capacity to address all emergency matters and case generated due to issues associated with the quarantine and isolation of individuals and other public health related cases brought by public health officials.

These short-term objectives may need to be performed under a situation where no, or only limited, face-to-face contact is possible and with significant impact to judges, attorneys, parties, clerks and deputy clerks, sheriffs and deputy sheriffs, court administrators and staff, state and local public health officials, jurors, etc., due to illness or death.

While traditionally COOP allows for 30 days under which mission essential functions are performed, the limitation on face-to-face contact may require an additional 60 days under which operations are limited to only mission essential functions.

Transition to full operations should be initiated as soon as possible. If full operations can not be initiated within 90 days, efforts to achieve the long-term tactical objectives described below should be initiated with 90 days of COOP activation.

Long-Term Tactical Objective (90 Days and Longer)

Within 90 days of COOP activation, the tactical objective is to have the capacity to perform all criminal matters, including the capacity to conduct jury trials, have the capacity to address all emergency civil matters, and have the capacity to perform all other mission essential functions under a situation where no, or only limited, face-to-face contact is possible and with significant impact to judges, attorneys, parties, clerks and deputy clerks, sheriffs and deputy sheriffs, court administrators and staff, state and local public health officials, jurors, etc., due to illness or death.

Planning Assumptions for the Georgia State Courts:

The following planning assumptions should be considered when developing court emergency preparedness plans to achieve the tactical objectives listed above:

- An increase in cases with individuals seeking relief and other matters may occur;
- Court operations may be detrimentally impacted by the pandemic for up to 18 months;
- Response and recovery will be bottom-up with local court officials being primarily responsible for the response and recovery efforts in their area with only limited support from federal and state government officials;
- At a minimum, each court should ensure they have the capacity to perform their mission essential function, as defined in their COOP, and all emergency matters and cases generated due to issues associated with the quarantine and isolation of individuals and other public health related cases brought by public health officials for the first 90 days of COOP activation;
- If due to the nature of the pandemic, full operations can not be restored within 90 days of COOP activation, each court should ensure they have the capacity to:
 - Perform all criminal matters, including the capacity to conduct jury trials with 90 days of COOP activation;
 - Address all emergency civil matters with 90 days of COOP activation; and
 - Perform all other mission essential functions with 90 days of COOP activation;
- Of the judges, attorneys, parties, clerks and deputy clerks, sheriffs and deputy sheriffs, court administrators and staff, state and local public health officials, jurors, etc., necessary to perform the mission essential functions, on-third will not be available due to illness or death;
- Face-to-face contact between judges, attorneys, parties, clerks and deputy clerks, sheriffs and deputy sheriffs, court administrators and staff, state and local public health officials, jurors, etc., necessary to perform the mission essential functions, may be dramatically limited or unavailable; and

- The court facilities, court infrastructure, public utilities and services, and most, if not all, residences will be physically intact during the response and recovery from the pandemic, but services may be limited due to isolation, quarantine, illness, or death within the impacted communities.

SECTION 1.0 BENCH GUIDE

SECTION 1.1 Involuntary Medical Examinations For Communicable Disease

A. Under what circumstances may the court order an individual to submit to a medical examination?

Current Georgia law does not address whether a court can order involuntary medical examinations during a public health emergency. However, O.C.G.A. § 31-12-3 does allow the Department of Human Resources (DHR) to “require such other measures to prevent the conveyance of infectious matter from infected persons to other persons as may be necessary and appropriate.”

Current Georgia law does not specifically address whether the public health authority can order involuntary medical examinations during a public health emergency.

Two current Georgia statutes come close to addressing Public Health’s (Georgia Department of Human Resources, Division of Public Health) ability to order an involuntary medical examination.¹ See O.C.G.A § 31-12-2.1; O.C.G.A § 31-2-1. O.C.G.A § 31-12-2.1 addresses the duties of the Department of Human Resources (DHR) during a public health emergency. The statute reads in pertinent part:

(a) The department shall ascertain the existence of any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency; investigate all such cases to determine sources of infection and to provide for proper control measures; and define the distribution of the illness or health condition. The department shall:

(l) Identify, interview, and counsel, as appropriate, all individuals reasonably believed to have been exposed to risk...

O.C.G.A. § 31.12.2.1(a). The statute allows the DHR to “investigate” and provide “proper control measures,” but the statute does not explicitly allow for physical examinations. The statute also does not address whether DHR has the power to involuntarily force people to submit to “investigations” or “control measures” during a public health emergency. However, O.C.G.A. § 31-12-3 does allow DHR to “require

¹ See Appendix A for full text of current Georgia statutes and regulations.

such other measures to prevent the conveyance of infectious matter from infected persons to other persons as may be necessary and appropriate.”

O.C.G.A. § 31-2-1 addresses the general duties and powers of DHR. O.C.G.A. §31-2-1(4) states that the DHR is empowered to:

Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department’s rules and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to disease communicable to man.

See also O.C.G.A. § 31-12-3 (Power to require immunization and other preventive measures).

SECTION 1.0 BENCH GUIDE

SECTION 1.2 Involuntary Treatment for Communicable Disease

Georgia Prevention of Hazardous Conditions, Preventable Diseases, and Metabolic Disorders or some other Public Health statutes

A. Under what circumstances may the Court order an individual to submit to treatment for a communicable disease?

“The Department of Human Resources is created and established to safeguard and promote the health of the people of this state and is empowered to employ all legal means appropriate to that end. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(4) Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department's rules and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to a disease communicable to man.” O.C.G.A. 31-2-1 (4).

B. What is the Procedure of issuing a court order for involuntary treatment?

1. Filing a Petition

The county board of health or the Department of Human Resources shall file a petition for commitment in tuberculosis cases. O.C.G.A. § 31-14-2. Law on other conditions was not identified.

2. Jurisdiction and Venue

In tuberculosis cases, the petition for commitment should be “returnable” to the superior court of the county wherein such person resides or, if such person is a nonresident or has no fixed place of abode, in the county wherein such person may be found.” O.C.G.A. § 31-14-2. Law on other conditions was not identified.

3. Service and Notice

The following statute applies to tuberculosis cases only: “A copy of the petition and order shall be served on the person named in the petition. Any failure of such person to comply with the order or with the notice by the persons appointed therein to make examination shall be enforceable by attachment for contempt.” O.C.G.A. § 31-14-4. Law on other conditions was not identified.

4. Hearings

a. Burden and Standard of Proof

In tuberculosis case, “when the county board of health or the Department of Human Resources has evidence that any person has active tuberculosis and is violating the rules and regulations promulgated by the department or the orders issued by the county board of health and thereby presents a substantial risk of exposing other persons to an imminent danger of infection, after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, the county board of health or the department shall institute proceedings by petition for commitment, returnable to the superior court of the county wherein such person resides or, if such person is a nonresident or has no fixed place of abode, in the county wherein such person may be found. The petition executed under oath shall state the specific evidence supporting the allegations, that the evidence has existed within the preceding 30 days, that the person named therein has active tuberculosis and is violating the rules and regulations of the department or the orders of the county board of health and presents a substantial risk of exposing other persons to an imminent danger of infection, after having been directed by the county board of health or department to comply with such rules, regulations, or orders, and that the public health requires commitment of the person named therein. The petition must be accompanied by a certificate of a physician stating that the physician knows or suspects that the person named therein may have active tuberculosis, the evidence which forms the basis of this opinion, and whether a full evaluation of the person is necessary.” O.C.G.A. § 31-14-2. Law on other conditions was not identified. See also O.C.G.A. § 31-14-3.

b. Right to Counsel

The patient in a tuberculosis case “has a right to counsel at the hearing, that the patient may apply immediately to the superior court in the county where the committed patient is confined to have counsel appointed if the patient cannot afford counsel, and that the court will appoint counsel for the patient unless the patient indicates in writing that he or she does not desire to be represented by counsel or has made his or her own arrangements for counsel. Payment for such court appointed representation shall be made by

the department (of Human resources). The hearing may be continued as necessary to allow the appointment of counsel.” O.C.G.A. § 31-14-8.1. Law on other conditions was not identified.

c. Conduct of the hearing

O.C.G.A. § 31-14-3 provides as follows for tuberculosis patients: “(a) Immediately upon the filing of a petition pursuant to Code Section § 31-14-2, the judge of the superior court shall set the matter for a full and fair hearing on the petition. Such hearing shall be held no sooner than seven days and no later than 12 days, excluding Saturdays, Sundays, and holidays, subsequent to the time of filing of the petition. The court shall serve personal notice of the hearing upon the person named in the petition and upon the petitioner. The notice required by this Code section shall include the time and place of the hearing; notice of the person's right to counsel, that the person may apply for court appointed counsel if the person cannot afford counsel, and that the court will appoint counsel unless the person indicates in writing that he or she does not wish to be represented by counsel; and notice that the person may waive his or her rights to a hearing under this Code section. A copy of the petition and physician's certificate filed under Code Section 31-14-2 shall be attached to the notice. The judge shall, where prayed for in the petition, provide for the examination of the person named therein by a physician licensed under Chapter 34 of Title 43, which examination shall include sputum examinations by a laboratory approved by the department and a recent chest X-ray of good diagnostic quality interpreted by a physician licensed to practice under Chapter 34 of Title 43, as a part of the order setting the matter for hearing; the order shall require the person or persons named therein to make such examination. Any X-ray and accompanying report or any written report as to a sputum examination shall be admissible as evidence without the necessity of the personal testimony of the person or persons making such examination and report. A physician may rely upon this evidence as the basis for the diagnosis of active tuberculosis and the defendant may offer opposing evidence on this issue by testimony or otherwise. All court costs incurred in proceedings under this chapter, including costs of examinations required by order of court but excluding any examinations procured by the person named in the petition, shall be borne by the county wherein the proceedings are brought. The fee to be paid to an attorney appointed under this Code section to represent a person who cannot afford counsel shall be paid by the county board of health instituting proceedings for commitment.

(b) A full and fair hearing shall mean a proceeding before a hearing examiner under Code Section 31-14-8.1 or before the superior court in a proceeding under subsection (a) of this Code section. The hearing may be held in a regular court room or in an informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded

electronically or by a qualified court reporter. The person named as defendant shall be provided with the opportunity for the assistance of counsel. If the defendant cannot afford counsel, the court shall appoint counsel for the defendant or the hearing examiner shall request that the court appoint such counsel; provided, however, that the defendant shall have the right to refuse in writing appointment of counsel. Both parties shall have the right to confront and cross-examine witnesses, to offer evidence, and to subpoena witnesses. Both parties shall have the right to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases, except as otherwise provided for in this chapter. The burden of proof shall be upon the party seeking commitment of the defendant. The standard of proof shall be by clear and convincing evidence. At the request of the defendant, the public may be excluded from the hearing. The defendant may waive his or her right to be present at the hearing. The reason for the action of the court or the hearing examiner in excluding the public or permitting the hearing to proceed in the defendant's absence shall be reflected in the record.”

d. Appeal

Either party in a tuberculosis case “may appeal any order of the superior court or hearing examiner in a proceeding under this chapter. An order of the superior court may be appealed to the Court of Appeals and the Supreme Court as provided by law but shall be heard as expeditiously as possible. The appeal of an order of a hearing examiner shall be to the superior court of the county in which the proceeding was held. The review shall be conducted by the superior court without a jury and shall be confined to the record. The court, upon request, may hear oral argument and receive written briefs. The patient must pay his or her costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The parties shall retain all rights of review of any order of the superior court, the Court of Appeals, and the Supreme Court, as provided by law. The patient shall have a right to counsel on appeal or, if unable to afford counsel, shall have counsel appointed for the patient by the court. The appeal rights provided in this Code section are in addition to any other appeal rights which the parties may have.” O.C.G.A. § 31-14-8.2. Law on other conditions was not identified.

C. What other remedies are available to the Court?

1. Safekeeping and Treatment

O.C.G.A. § 31-14-13 (a) – (b) provides as follows regarding tuberculosis patients: “In lieu of the petition for commitment as authorized by Code Section 31-14-2, the county board of health or the department may petition the court for an order directing the person to comply with a plan of evaluation or outpatient treatment. The department may also petition the court for an order directing the parents, guardians, or custodians of persons under the age of 18 who have been exposed to tuberculosis to allow screening for tuberculosis by public health authorities or to provide evidence of such screening by a licensed physician. Proceedings, evidence, and hearings thereon will be in the same manner as with commitment petitions, and upon the hearing the court may dismiss the petition or order the person to comply with the screening, evaluation, or outpatient treatment plan. The court may also modify the plan prior to ordering compliance.

(b) A petition for outpatient treatment as authorized by subsection (a) of this Code section may also be initiated by a county board of health or the department where a previously hospitalized, diagnosed, or committed patient's condition no longer requires hospitalization or commitment but where protection of the public health requires continued treatment on an outpatient basis of said patient.”

Also, O.C.G.A. § 31-14-7 provides: “(a) Upon the hearing set in the order, if the court finds that the person has active tuberculosis, is violating the rules and regulations promulgated by the department or the orders issued by the county board of health after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, presents a substantial risk of exposing other persons to an imminent danger of infection, and there is no less restrictive available alternative to involuntary treatment at a hospital or facility approved by the department for the care of tubercular patients, then the court shall issue an order committing the defendant to the custody of the sheriff of the county or the sheriff's deputies to be delivered to the designated hospital or facility, where the defendant shall be admitted for care and treatment not to exceed two years. If the court does not find that the above standards are met, then the court shall dismiss the petition and the defendant shall be released from custody if taken into custody pursuant to Code Section 31-14-5. The costs of transporting such person to the hospital or facility shall be paid out of county funds.

(b) An order for commitment shall be subject to review at the instance of either party by appeal.”

2. Injunction

No law regarding injunctions was identified.

D. What enforcement mechanisms are available to the Court?

1. Statutory Sanctions

No statutory sanctions were identified at this time.

2. Prosecution

No law regarding prosecution for resisting treatment was identified.

3. Contempt

“Any person known or suspected to have tuberculosis who fails to comply with a plan of evaluation or outpatient treatment ordered pursuant to this Code section, or any parent, guardian, or custodian of a person under the age of 18 who fails to comply with screening ordered pursuant to this Code section or who aids or abets such failure may be punished as for contempt. Contempt proceedings may be initiated by the filing of a petition by the county board of health or by the department with the superior court of the county of the patient's residence or the county where the patient may be found if a nonresident or without a fixed place of abode.” O.C.G.A. § 31-14-13(c). Law on other conditions was not identified.

“No person having active tuberculosis who, in his or her home or other place, obeys the rules and regulations of the department and county boards of health for the control of active tuberculosis or who voluntarily accepts care in a hospital or facility operated for the care of tuberculosis, in his or her home, or in another place and who obeys the rules and regulations of the department and completes the prescribed course of therapy for the control of active tuberculosis shall be committed as prescribed in this chapter.” O.C.G.A. § 31-14-2.

“Any person who leaves a hospital or facility approved by the department for the treatment of tuberculosis to which he or she has been committed by court order, without having been discharged by the medical staff of the tuberculosis inpatient unit or the community tuberculosis control unit, shall be taken into custody and returned thereto by the sheriff of any county where such person may be found, upon affidavit being filed with the sheriff by the designated responsible official of the hospital or facility to which such person has been committed.” O.C.G.A. § 31-14-11. Law on other conditions was not identified.

E. May the Court order Pre-Trial Detention?

“Where a danger exists that the person named in the petition may abscond or conceal himself or herself or where the person is conducting himself or herself so as to present a substantial risk of exposing other persons to an imminent danger of infection, the court may, as a part of the order made pursuant to Code Section 31-14-3, direct the sheriff or the sheriff’s deputies to take such person into custody pending hearing and impose such confinement as will not endanger other persons. An affidavit shall be attached to the petition containing the specific facts supporting the need for custody pending hearing.” O.C.G.A. § 31-14-5. Law on other conditions was not identified.

F. Who is responsible for transportation costs?

When a person is taken into custody pursuant to Code Section 31-14-5, “The costs of transporting such person to the hospital or facility shall be paid out of county funds.” O.C.G.A. § 31-14-7. Law on other conditions was not identified.

G. When is informed consent a consideration?

No law regarding informed consent was identified.

H. Responsibilities of Local Boards of Health

The following provisions of the Georgia Administrative Code 290-5-16-.03 involve the responsibilities of county board’s of health for the treatment of tuberculosis:

1. If, upon information obtained by an agent, the local county health department or its designee, (LCHD) has reasonable cause to conclude that a person has a suspected or confirmed case of tuberculosis which needs prompt medical evaluation, the LCHD shall issue to the person a written order directing him/her to appear at a specified time and place to comply with a written plan of evaluation. The LCHD shall attach to the order a statement containing its factual basis and shall inform the person of the right to respond in writing to allegations in the statement prior to the scheduled time of the evaluation.
2. If the person fails to submit to the planned evaluation and has not presented to the LCHD satisfactory reasons why such an evaluation is unnecessary, the LCHD may, in its discretion, file either a petition for an order of compliance or commitment.
3. If, upon information obtained by an agent of the LCHD, the LCHD has reasonable cause to conclude that a minor may have been exposed to tuberculosis, the LCHD shall issue an order to the parent, guardian or custodian of the minor directing him/her

at a specified date and place either to allow tuberculosis screening of the minor by the LCHD or to provide evidence of such screening by a licensed physician. The LCHD shall attach to the order a statement setting forth its factual basis and shall inform the parent, guardian or custodian of his/her right to respond in writing to allegations in the statement prior to the specified date of the screening, or submission of evidence thereof.

4. After it has identified a confirmed or suspected case of tuberculosis, the LCHD shall seek to implement a written plan of treatment which shall be explained to the patient who will be given an opportunity to consent to it in writing.
5. The written plan of treatment shall contain a detailed description of the required cooperation of the patient and the set time schedule of any directly observed intake of prescribed drugs.
6. The LCHD shall also explain orally and in writing to the patient the value of treatment and why drugs must be taken for the patient's recovery, control of cough, the prevention of the possible emergence of drug resistant organisms, and to prevent the spread of the disease to others.
7. If, upon information obtained by an agent of the LCHD, the LCHD has reasonable cause to conclude that a patient is failing to comply with a plan of treatment, the LCHD shall issue a written order to the patient directing him/her to present evidence of an intention to comply with the plan of treatment by a specified date. The LCHD shall attach to the order a statement setting forth its factual basis and shall inform the person of his/her right to respond in writing to the allegations in the statement prior to the specified date.
8. If by the specified date, the patient fails to present to the LCHD evidence that he/she has complied or intends to comply with the plan of treatment, the LCHD may in its discretion issue a quarantine order against the patient or file a judicial petition for an order of compliance or commitment. No such action, however, shall be taken against a patient who voluntarily accepts inpatient treatment recommended by the LCHD.

SECTION 1.0 BENCH GUIDE

SECTION 1.3 Quarantine

A. Under what circumstances may individuals be ordered quarantined?

Instead of providing specific conditions for when a court can order that an individual be quarantined, Georgia law delegates general authority to order quarantines to the Department of Human Resources and all county boards of health and/or, in the event of a “public health emergency,” to the Governor.

1. Health Boards

“The department and all county boards of health may ... require quarantine or surveillance of carriers of disease and persons exposed to, or suspected of being infected with, infectious disease until they are found to be free of the infectious agent or disease in question.” O.C.G.A. § 31-12-4 (noting that in the case of a declaration of a public health emergency, the Department of Human Resources shall promulgate appropriate rules and regulations for implementation of this code section)

2. Emergency Powers of Governor

“In the event of an actual or impending emergency or disaster of natural or human origin, or impending or actual enemy attack, or a public health emergency, within or affecting this state or against the United States, the Governor may declare that a state of emergency or disaster exists.” O.C.G.A. § 38-3-51(a). Following that declaration, the Governor has a wide array of emergency powers, including the power to order quarantines. O.C.G.A. § 38-3-51. See also, O.C.G.A. 39-3-22, (Governor’s emergency management powers and duties).

In addition to these general powers, in the case of tuberculosis, Georgia law specifically allows the county board of health or the Department of Human Resources to institute proceedings by petition for commitment. O.C.G.A. § 31-14-2. In order to initiate such proceedings, these agencies must have evidence that the person has active tuberculosis and is violating the rules and regulations promulgated by the department or the orders issued by the county board of health. *Id.*

B. What must be proven to obtain a court ordered quarantine?

See question A.

C. What is the procedure of obtaining a court order for quarantine?

Because Georgia law provides for general authority, it appears the procedure, for the most part, is left to the normal operation of health boards and the Governor.

However, for emergency declarations by the Governor and for tuberculosis commitment proceedings, there are specific procedures and protections for due process.

1. Filing of a Petition

Tuberculosis. “[T]he county board of health or the department shall institute proceedings by petition for commitment, returnable to the superior court of the county wherein such person resides or, if such person is a nonresident or has no fixed place of abode, in the county wherein such person may be found. The petition executed under oath shall state the specific evidence supporting the allegations, that the evidence has existed within the preceding 30 days, that the person named therein has active tuberculosis and is violating the rules and regulations The petition must be accompanied by a certificate of a physician stating that the physician knows or suspects that the person named therein may have active tuberculosis, the evidence which forms the basis of this opinion, and whether a full evaluation of the person is necessary.” O.C.G.A. § 31-14-2.

2. Jurisdiction

Emergency Powers of Governor. “An individual or a class may challenge the [quarantine order instituted pursuant to a public health emergency] before any available judge of the state courts, the superior courts, the Court of Appeals, or the Supreme Court. Such judge, upon attestation of the exigency of the circumstances, may proceed ex parte with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties.” O.C.G.A. § 38-3-51(i)(2)(C).

Tuberculosis. “[T]he county board of health or the department shall institute proceedings by petition for commitment, returnable to the superior court of the county wherein such person resides or, if such person is a nonresident or has no fixed place of abode, in the county wherein such person may be found.” O.C.G.A. § 31-14-2.

3. Venue

See above.

4. Service and Notice

Tuberculosis. “The court shall serve personal notice of the hearing upon the person named in the petition and upon the petitioner. The notice required by this Code section shall include the time and place of the hearing; notice of the person’s right to counsel, that the person may apply for court appointed counsel if the person cannot afford counsel; and notice that the person may waive his or her rights to a hearing under this Code section. A copy of the petition and physician’s certificate filed under Code Section 31-14-2 shall be attached to the notice.” O.C.G.A. § 31-14-3(a).

5. Hearings

a. Burden and Standard of Proof

Emergency Powers of Governor. “An order imposing a quarantine or a vaccination program may be appealed but shall not be stayed during the pendency of the challenge. The burden of proof shall be on the state to demonstrate that there exists a substantial risk of exposing other persons to imminent danger. With respect to vaccination, the state’s burden shall be met by clear and convincing evidence. With respect to quarantine, the state’s burden of proof shall be met by a preponderance of the evidence.” O.C.G.A. § 38-3-51(i)(2)(B).

Tuberculosis. “The burden of proof shall be upon the party seeking commitment of the defendant. The standard of proof shall be by clear and convincing evidence.” O.C.G.A. § 31-14-3(b).

b. Right to Counsel

Emergency Powers of Governor. “Consonant with maintenance of appropriate quarantine rules, the department shall permit access to counsel in person or by such other means as practicable that do not threaten the integrity of the quarantine.” O.C.G.A. § 38-3-51(i)(2)(A).

Tuberculosis. “The person named as defendant shall be provided with the opportunity for the assistance of counsel. If the defendant cannot afford counsel, the court shall appoint counsel for the defendant or the hearing examiner shall request that the court appoint such counsel; provided, however, that the defendant shall have the right to refuse in writing appointment of counsel.” O.C.G.A. § 31-14-3(b).

c. **Conduct of the Hearing**

Emergency Powers of Governor. “The judge hearing the matter may consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed to determine the interests of a class or classes. The rules of evidence applicable to civil cases shall be applied to the fullest extent practicable taking into account the circumstances of the emergency. All parties shall have the right to subpoena and cross-examine witnesses, but in enforcement of its subpoena powers the court shall take into account the circumstances of the emergency. All proceedings shall be transcribed to the extent practicable.” O.C.G.A. § 38-3-51(i)(2)(C).

Tuberculosis. “A full and fair hearing shall mean a proceeding before a hearing examiner under Code Section 31-14-8.1 or before the superior court in a proceeding under subsection (a) of this Code section. The hearing may be held in a regular court room or in an informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded electronically or by a qualified court reporter ... Both parties shall have the right to confront and cross-examine witnesses, to offer evidence, and to subpoena witnesses. Both parties shall have the right to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases, except as otherwise provided for in this chapter ... At the request of the defendant, the public may be excluded from the hearing. The defendant may waive his or her right to be present at the hearing. The reason for the action of the court or the hearing examiner in excluding the public or permitting the hearing to proceed in the defendant's absence shall be reflected in the record.” O.C.G.A. § 31-14-3(b).

D. What remedies are available to the Court?

Emergency Powers of Governor. “The judge hearing the matter may enter an appropriate order upholding or suspending the quarantine or vaccination order. With respect to vaccination, the order may be applicable on notice to the department or its agents administering the vaccination, or otherwise in the court's discretion. With respect to quarantines, the order shall be automatically stayed for 48 hours.” O.C.G.A. § 38-3-51(i)(2)(D).

Tuberculosis. “Upon the hearing set in the order, if the court finds that the person has active tuberculosis, is violating the rules and regulations promulgated by the department or the orders issued by the county board of health after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, presents a substantial risk of exposing other persons to an

imminent danger of infection, and there is no less restrictive available alternative to involuntary treatment at a hospital or facility approved by the department for the care of tubercular patients, then the court shall issue an order committing the defendant to the custody of the sheriff of the county or the sheriff's deputies to be delivered to the designated hospital or facility, where the defendant shall be admitted for care and treatment not to exceed two years. If the court does not find that the above standards are met, then the court shall dismiss the petition and the defendant shall be released from custody if taken into custody pursuant to Code Section 31-14-5." O.C.G.A. § 31-14-7(a).

E. What enforcement mechanisms are available to the Court?

1. Prosecution

See above.

2. Contempt

Tuberculosis. "A copy of the petition and order shall be served on the person named in the petition. Any failure of such person to comply with the order or with the notice by the persons appointed therein to make examination shall be enforceable by attachment for contempt." O.C.G.A. § 31-14-4.

F. May the Court Order Pre-Hearing Detention?

Tuberculosis. "Where a danger exists that the person named in the petition may abscond or conceal himself or herself or where the person is conducting himself or herself so as to present a substantial risk of exposing other persons to an imminent danger of infection, the court may, as a part of the order made pursuant to Code Section 31-14-3, direct the sheriff or the sheriff's deputies to take such person into custody pending hearing and impose such confinement as will not endanger other persons. An affidavit shall be attached to the petition containing the specific facts supporting the need for custody pending hearing." O.C.G.A. § 31-14-5.

G. Who is responsible for costs?

Emergency Powers of Governor. "Filing fees shall be waived and all costs borne by the state." O.C.G.A. § 38-3-51(i)(2)(D). "Filing fees for appeal shall be waived, all costs shall be borne by the state, and such appeals shall be heard expeditiously." O.C.G.A. § 38-3-51(i)(2)(E).

Tuberculosis. "All court costs incurred in proceedings under this chapter, including costs of examinations required by order of court but excluding any examinations

procured by the person named in the petition, shall be borne by the county wherein the proceedings are brought. The fee to be paid to an attorney appointed under this Code section to represent a person who cannot afford counsel shall be paid by the county board of health instituting proceedings for commitment.” O.C.G.A. § 31-14-3(a).

SECTION 1.0 BENCH GUIDE

SECTION 1.4 Searches of Property

A. Under what circumstances may the court order a search of private property for public health purposes?

The Bill of Rights for both the United States² and Georgia³ constitutions protect against unreasonable searches and seizures. For a search to be justifiable under the Fourth Amendment, a government official may gain access to private property by (1) obtaining a valid warrant, (2) obtaining voluntary consent, or (3) through the existence of exigent circumstances requiring immediate action. Binkley v. State, 255 Ga. App. 313, 314 (2002). If a reasonable expectation of privacy exists for a place, any search, absent exigent circumstances, is subject to the warrant requirement. Michigan v. Clifford, 464 U.S. 287, 292 (1984).

If the primary objective of a search is to gather evidence in a criminal investigation, a criminal search warrant may only be obtained on a showing of

² The Fourth Amendment to the United States Constitution reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV. The procedural and substantive provisions of the Fourth Amendment have been incorporated through the Due Process clause of the Fourteenth Amendment to apply to the states. See Mapp v. Ohio, 367 U.S. 643 (1961); Aguilar v. Texas, 378 U.S. 108 (1964).

³ The Georgia Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched and the persons or things to be seized.

Ga. Const., art 1, § 1, ¶ XIII. The standard of protection against unreasonable searches provided in the Georgia Constitution is same as that provided by the United States Constitution. Wells v. State, 180 Ga. App. 133, 134 (1986).

probable cause that relevant evidence will be found in the place to be searched. Clifford, 464 U.S. 287 at 294.

Where the objective is not related to a criminal matter, an administrative warrant will suffice. Clifford, 464 U.S. 287 at 294. Probable cause to issue an administrative warrant exists if reasonable legislative, administrative, or judicially prescribed standards for conducting an inspection are satisfied. Id. at 294, n.5.

Entry for purposes of public health inspections by representatives of a governmental health agency are generally considered administrative searches. See Richard A. Goodman et al., *Forensic Epidemiology: Law at the Intersection of Public Health and Criminal Investigations*, 31 J.L. MED. & ETHICS 684, 690 (Winter 2003).

Exigent circumstances exist to justify the warrantless entry into private property where a government official has a reasonable belief that such action is a necessary response on his part to an emergency situation. Burk v. State, 284 Ga. App. 843, 844 (2007). Furthermore, obligation rests upon the State, through its proper instrumentalities or agencies, to take all necessary steps to promote the preservation of public health. Irwin v. Arrendale, 117 Ga. App. 1, 4 (1967). Therefore, it is foreseeable that where an official reasonably believes that the warrantless entry into private property is a necessary response to a public health emergency (i.e. epidemic, bioterrorism attack, etc.), exigent circumstances are such to probably justify such an entry.

Several Georgia statutes deal specifically with government searches and inspections for purposes of protecting public health.

O.C.G.A. § 31-5-21 allows for a representative of any county board of health to obtain an inspection warrant⁴ to conduct a search or inspection of property, with or without the consent of the owner. Ga. Code Ann. § 31-5-21 (2006).

O.C.G.A. § 31-5-10 applies in counties having a population of 450,000 or more and allows the Department of Human resources ("DHR"), or any county board of health, to obtain an inspection warrant upon receiving notification that a condition exists on private property which may be injurious to the public health, safety, or comfort. Ga. Code Ann. §§ 31-5-10(a), (b) (2006).

O.C.G.A. § 31-12-10 creates a duty for a person in charge of any facility where people live, work, or otherwise congregate, upon reasonable notice and at reasonable times, to grant entry to duly authorized agents of the DHR or any

⁴ O.C.G.A. § 31-5-20 defines an "inspection warrant" as:

A warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of any of the provisions of laws authorizing licensure, inspection, or regulation by the Department of Human Resources or a local agency thereof.

Ga. Code Ann. § 31-5-20 (2006).

county board of health in order to effectuate the control of hazardous conditions, preventable diseases, and metabolic disorders. Ga. Code Ann. § 31-12-10 (2006).

In a public health emergency, the DHR has a duty to ascertain the existence, determine the source, and provide for control measures of any health condition that might be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infections or toxins that might pose a substantial risk of a public health emergency. Ga. Code Ann. § 31-12-2.1(a) (2006). In doing so, the DHR is authorized to:

Identify, interview, and counsel, as appropriate, all individuals reasonably believed to have been exposed to the risk; (2) Develop information relating to the source and spread of the risk; and (3) Close, evacuate, or decontaminate, as appropriate, any facility and decontaminate any materials when the department reasonably suspects that such material or facility may endanger public health. Ga Code Ann. §§ 31-12-2.1(a)(1) to (a)(3) (2006).

In performing the above duties, sufficient exigent circumstances likely exist to justify entry into private property. See Burk, 284 Ga. App. 843; Clifford, 464 U.S. 287.

Nuisances. The Georgia Code gives a State official the power to investigate potential nuisances and determine which private buildings are unfit for human habitation or commercial, industrial, or business use. Ga. Code Ann. § 41-2-11(1) (2006). In performance of this duty, the official may enter the premises for the purpose of making examinations; provided, however, that such entries shall be made in a manner as to cause the least possible inconvenience to the person in possession. Ga. Code Ann. § 41-2-11(3) (2006).

1. Inspections of Livestock

- a.** The Commissioner of Agriculture, or any duly authorized livestock inspector, is vested with the police power to inspect any livestock in the state of Georgia and any vehicle transporting livestock in the State. Ga. Code Ann. §§ 4-4-5(b)(2) to (b)(3) (2006).
- b.** Slaughtering facilities are subject to inspection under Georgia law. Ga. Code Ann. § 4-4-47 (2006).
- c.** The Commissioner of Agriculture, or any duly authorized livestock inspector, is authorized to enter any premises, barn or building where livestock is permanently or temporarily kept. Ga. Code Ann. § 4-4-62 (2006). Furthermore, any person that forcibly resists, opposes, assaults, prevents, impedes, or interferes with an inspector shall be found guilty of a misdemeanor. Ga. Code Ann. § 4-4-75 (2006).

- d.** Any poultry possibly subject to infection is subject to inspection by a veterinarian approved by the Commissioner. Ga. Code Ann. § 4-4-81 (2006).
- e.** The Commissioner of Agriculture, or any duly authorized agent, may enter any premises, barn, lot or other place where cattle are kept for the purpose of testing cattle for tuberculosis. Ga. Code Ann. § 4-4-92(b) (2006).
- f.** The Commissioner of Agriculture, or any duly authorized agent, is authorized to inspect any premises where equine (horses) are kept or sold, or of any licensed dealer, broker, or livestock market operator. Ga. Code Ann. § 4-4-115 (2006).
- g.** Deer farm operator's must allow any representatives from agencies dealing with farmed deer or wild animals entry onto the deer farm. Ga. Code Ann. § 4-4-175 (2006).

2. Food

- a.** DHR representatives are authorized to enter and inspect food service establishments upon obtaining an inspection warrant. Ga. Code Ann. § 26-2-375(a) (2006).
- b.** The Commissioner of Agriculture, or any duly authorized agent shall have free access, at all reasonable hours, to any factory, warehouse or establishment in which food is manufactured, processed, packed, or held for the introduction of commerce in order to inspect the premises or sample the product. Ga. Code Ann. § 26-2-36(a) (2006).
- c.** DHR representatives may, at a reasonable business hour, enter and inspect in a reasonable manner the premises of persons providing an ambulance service upon obtaining an inspection warrant. Ga. Code Ann. § 31-11-9 (2006).
- d.** Representatives of the DHR or any county board of health may, at a reasonable time, enter and inspect in a reasonable manner the premises of a tattoo studio upon obtaining an inspection warrant. Ga. Code Ann. § 31-40-6 (2006).
- e.** Representatives of the DHR or any county board of health may, at a reasonable time, enter and inspect in a reasonable manner the premises of any tourist court upon obtaining an inspection warrant. Ga. Code Ann. § 31-28-6 (2006).

3. Disease Prevention and Control Searches

- a. No Georgia caselaw specifically controls searches done for disease prevention and control. But see Irwin, 117 Ga. App. 1 (creating obligation on State to protect the public health); Burk, 284 Ga. App. 843 (allowing warrantless searches where a government official has a reasonable belief that such action is a necessary response on his part to an emergency situation).
- b. Several Georgia statutes authorize searches done for disease control and prevention. See Ga. Code Ann. §§ 4-4-5, 4-4-47, 4-4-81, 4-4-92, 31-5-10, 31-5-21, 31-11-9, 31-12-2.1, 31-12-10, 31-28-6, 31-40-6, 41-2-11.

4. Sanitary Standards Searches

- a. No Georgia caselaw specifically controls searches done to enforce sanitary standards. But see Irwin, 117 Ga. App. 1 (creating obligation on State to protect the public health); Burk, 284 Ga. App. 843 (allowing warrantless searches where a government official has a reasonable belief that such action is a necessary response on his part to an emergency situation).
- b. Several Georgia statutes authorize searches done to enforce sanitary standards. See Ga. Code Ann. §§ 4-4-5, 4-4-47, 4-4-62, 4-4-115, 4-4-175, 26-2-36, 26-2-375, 31-5-10, 31-5-21, 31-11-9, 31-12-2.1, 31-12-10, 31-28-6, 31-40-6, 41-2-11.

5. Injunction

No information available at this time.

B. What is the procedure for issuing a Warrant/Order to Search Private Property for Public Health Purposes?

Disease Prevention and Control Searches– see below

Sanitary Standards Searches– see below

1. Filing the application for the Warrant

- a. A search warrant may be issued only upon the application of an officer of this state or its political subdivisions charged with the duty of enforcing

the criminal laws or a currently certified peace officer engaged in the course of official duty. Ga. Code Ann. § 17-5-20(a) (2006).

- b.** Representatives of the DHR, Department of Agriculture, or any county board of health may obtain inspection warrants. Ga. Code Ann. § 31-5-21 (2006).
- c.** A search warrant shall not be issued upon the application of a private citizen or for his aid in the enforcement of personal, civil, or property rights. Ga. Code Ann. § 17-5-20(b) (2006).
- d.** An application may be made for a search warrant through video conference. Ga. Code Ann. § 17-5-21.1 (2006).
- e. Content of the application for a warrant**
 - i.** Under Georgia law, an inspection warrant shall be issued if a judge finds that specific conditions are met. The one seeking the warrant must establish:
 - a.** that the property to be inspected is to be inspected as a part of a legally authorized program of inspection; or
 - b.** there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property. Ga. Code Ann. § 31-5-22 (2006).
 - ii.** Under federal law, where the objective is not related to a criminal matter, an administrative warrant will suffice. Clifford, 464 U.S. 287 at 293.
 - a.** Probable cause to issue an administrative warrant exists if reasonable legislative, administrative, or judicially prescribed standards for conducting an inspection are satisfied. Id. at 294, n.5.
 - b.** Entry for purposes of public health inspections by representatives of a governmental health agency are generally considered administrative searches. See Richard A. Goodman et al., *Forensic Epidemiology: Law at the Intersection of Public Health and Criminal Investigations*, 31 J.L. MED. & ETHICS 684, 690 (Winter 2003).
 - iii.** Evidence used in the determination of probable cause for issuance of a search warrant may be presented by

written affidavit, sworn testimony, or both. Lewis v. State, 255 Ga. 101, 104 (1985).

2. Jurisdiction and Venue

- a. “Inspection warrants shall be issued only by a judge of a court of record whose territorial jurisdiction encompasses the property to be inspected. Ga. Code Ann. § 31-5-22(a) (2006).
- b. Any judicial officer authorized to hold a court of inquiry to examine into an arrest of an offender against the penal laws may issue a search warrant. Any retired judge or judge emeritus of a state court may issue search warrants as authorized by this Code section if authorized in writing to do so by an active judge of the state court of the county wherein the warrants are to be issued. Ga. Code Ann. § 17-5-21 (2006).
- c. State courts have jurisdictions within their territorial limits, concurrent with the superior courts, over the hearing of applications for and the issuance of search warrants. Ga. Code Ann. § 15-7-4(a)(3) (2006).
- d. Magistrate Courts and magistrates also have jurisdiction and power over the hearing of applications for and the issuance of search warrants. Ga. Code Ann. 15-10-2(1) (2006). However, a magistrate may not issue a warrant for a location outside his or her district. State v. Kirkland, 212 Ga. App. 672 (1994).

3. Notice

- a. When and if a warrant is executed, a duplicate copy will be left with any person from whom any items were seized; or, if no person is available, the copy will be left in a conspicuous place on the premises. Ga. Code Ann. § 17-5-25 (2006).
- b. When and if a warrant is executed, an officer is required to give verbal notice or make a good faith attempt to give verbal notice of his or her authority and purpose before entering the building or property. Ga. Code Ann. § 17-5-27 (2006).

4. Hearing

a. Burden and Standard of Proof

i. Probable Cause, Generally

- b. Probable cause to issue an administrative warrant exists if reasonable legislative, administrative, or judicially prescribed

standards for conducting an inspection are satisfied. Clifford, 464 U.S. 287 at 294, n.5.

- c. Probable cause for a criminal search is met if the issuing magistrate can conclude that there is a "fair probability that contraband or evidence of a crime will be found in a place." State v. Stephens, 252 Ga. 181 (1984) (relying on Illinois v. Gates, 462 U.S. 213 (1983)).

ii. Statutory Probable Cause Standards

- a. To issue an inspection warrant there must be probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property. Ga. Code Ann. § 31-5-22(b)(1) (2006).
- b. To issue a warrant for a criminal evidentiary search, there must be probable cause that a crime is being committed or has been committed. Ga. Code. Ann. § 17-5-21(a) (2006).

iii. Right to Counsel

- a. At a search warrant hearing, the owner of the property to be searched need not be present.

5. Conduct of Hearing

No information is available for this section at this time.

C. What remedies are available to the Court?

No information is available for this section at this time.

SECTION 1.0 BENCH GUIDE

SECTION 1.5 Temporary Closures or Evacuations

A. Background

1. Georgia Public Health Statutes

- a. In a county having a population of 450,000 or more, the superior court may authorize the DHR or the county board of health to take appropriate action to abate a public nuisance which is injurious to the public health, safety or comfort. Ga. Code Ann. § 31-5-10 (2006).
- b. The DHR is authorized to close, evacuate, or decontaminate, as appropriate, any facility and decontaminate or destroy any contaminated materials when the department reasonably suspects that such material or facility may endanger the public health. Ga. Code Ann. § 31-12-2.1(a)(3) (2006).
- c. Ordinances may be adopted by any municipality or county adopting minimum sanitation and safety standards for private property. Ga. Code Ann. § 41-2-9(a) (2006). The court may order structures found to be violating such standards, or structures constituting an endangerment to public health and safety, to be repaired, closed, or destroyed. Ga. Code Ann. § 41-2-9(a)(5) (2006).

2. Emergency Powers Statutes

- a. The DHR is authorized to close, evacuate, or decontaminate, as appropriate, any facility and decontaminate or destroy any contaminated materials when the department reasonably suspects that such material or facility may endanger the public health. Ga. Code Ann. § 31-12-2.1(a)(3) (2006).
- b. Following the Governor's declaration of an emergency, the governor has the power to: seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law; commandeer or utilize any private property if he or she finds this necessary to

cope with the emergency or disaster; direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he or she deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery; prescribe routes, modes of transportation, and destinations in connection with evacuation; control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein; and make provisions for the availability and use of temporary emergency housing. Ga. Code Ann. § 38-3-51 (2006).

B. Under what circumstances may a Court issue an order to temporarily close or evacuate public or private properties or areas?

1. In a county having a population of 450,000 or more, the superior court may authorize the DHR or the county board of health to take appropriate action to abate a public nuisance which is injurious to the public health, safety or comfort following an inspection of the property, issuance of notification, the filing of an action for injunction, and a proper hearing on the matter. Ga. Code Ann. § 31-5-10 (2006).
2. A court may order a structure repaired, closed, or destroyed following the filing of a complaint, a proper hearing with the interested parties, and a finding that the structure in question is in violation of municipal or county ordinances relating to public health and safety. Ga. Code Ann. § 41-2-9 (2006).

C. What must be proven for a court to issue an order to temporarily close or evacuate public or private properties or areas?

No information is available for this section at this time.

D. What is the procedure for obtaining a court order to close or evacuate public or private properties or areas?

1. Filing a petition or other civil action

c. Under O.C.G.A. § 31-5-10:

- i.** Any person who knows of the endangerment to public health, safety or comfort shall submit notification to the DHR or county board of health.
- ii.** The DHR or county board of health then must obtain an inspection warrant and verify that such a condition exists.
- iii.** Upon verification of such a condition, the DHR or county board of health must then serve notice to the occupants and owner of the property.
- iv.** Following the service of notice, the DHR or county board of health is free to file an action for the abatement of the nuisance.

d. Under O.C.G.A. § 41-2-9:

- i.** A request is first filed with a public officer by a public authority, or by at least five residents of the municipality or unincorporated county, charging that a property or structure thereon constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions.
- ii.** The public officer then must make an investigation or inspection of the property.
- iii.** Upon verification of the endangerment to public health or safety, the public officer may issue a complaint in rem against the property and serve all interested parties with summons and a copy of the complaint.
- iv.** The complaint must identify the subject real property, the interested parties, state with particularity the factual basis for the action, and contain a statement of the action sought by the public officer to abate the alleged nuisance.

2. Jurisdiction and Venue

- e. Under O.C.G.A. § 31-5-10, the superior court of the county in which the property said to be a nuisance sits may order the abatement of said nuisance provided that county has a population of 450,000 or more.
- f. Under O.C.G.A. § 41-2-9, if the nuisance complained of is in a city, the hearing will be held in the municipal court. If the nuisance complained of is in the unincorporated part of a county, the magistrate court of that county will have jurisdiction. Ga. Code Ann. § 41-2-5 (2006).

3. Service and Notice

g. Under O.C.G.A. § 31-5-10:

- i. Following a determination by the DHR or county board of health that a condition exists that is injurious to the public health, safety or comfort, the DHR/county board will overnight mail notification to the occupants and owner of the property as indicated by the property tax records.
- ii. Should the DHR or county board bring an action to abate the nuisance, process must be served to any party with an interest in the property in accordance with O.C.G.A. § 9-11-4. If the party to be served cannot be found, or is outside Georgia, the judge or clerk may make an order to have service made by the publication of summons pursuant to O.C.G.A. 9-11-4.

b. Under O.C.G.A. § 41-2-9:

- i. Following the filing of a complaint in rem by the public officer, summons and a copy of the complaint must be served to all interested parties.
- ii. If the owner is ordered to repair or demolish the structure and fails to do so by the time specified in the order, the public officer shall post a placard on the main entrance warning the public from use or occupation of the structure.

4. Hearings

No information is available for this section at this time.

- a. **Burden and Standard of Proof**
- b. **Right to appointed Counsel**
- c. **Conduct of the hearing**

E. What remedies are available to the Court?

Under O.C.G.A. § 31-5-10, any cost incurred by the DHR or county board to abate a nuisance shall constitute a lien against the property.

Under O.C.G.A. § 41-2-9:

If the structure is found to constitute an endangerment to public health or safety the court may order the owner to repair or demolish the property or structure.

In making the determination between repair and demolition, the court should consider the reasonable time needed to comply with an order for repair and the reasonable cost of repair in relation to the present value of the structure. Income and financial status of the owner should not be a factor. Present value and cost of repair may be established through affidavits of qualified persons. See Ga. Code Ann. 41-2-9(a)(4) (2006) (listing qualified persons).

If the owner fails to comply with the order by the expiration of the time specified and the public officer is forced to abate the nuisance, the costs of doing so shall constitute a lien against the real property.

F. What enforcement mechanisms are available to the Court?

1. Contempt

There are no specific provisions relating to the application of contempt in proceedings for closure or evacuation of private property. The power of the court to punish for contempt derives from O.C.G.A. § 15-1-4. (See also O.C.G.A. § 31-5-9).

2. Prosecution

There are no specific provisions relating to the application of criminal prosecution in proceedings for closure or evacuation of private property.

SECTION 1.0 BENCH GUIDE

SECTION Habeas Corpus 1.6

A. Under what circumstances may an individual petition for a Writ of Habeas Corpus in a Public Health context?

Georgia law does not specifically address the circumstances in which an individual may petition for a writ of habeas corpus in the public health context. However, “[a]ny person restrained of his liberty under any pretext whatsoever, except under sentence of a state court of record, may seek a writ of habeas corpus to inquire into the legality of the restraint.” O.C.G.A. § 9-14-1(a). Habeas relief is available when the petitioner is either in physical custody or when there are “significant restraints” on the petitioner’s liberty apart from physical custody. *Farris v. Slaton*, 262 Ga. 713 (1993).⁵

B. Jurisdiction and Venue

The petition may be presented to the judge of the superior court of the circuit in which the illegal detention exists. O.C.G.A. § 9-14-4. The judge may order the party restrained of their liberty to be brought before him or her from any county in his or her circuit, or it may be presented to the judge of the probate court of the county. O.C.G.A. § 9-14-4.

C. What information must the application for a Writ of Habeas Corpus contain? O.C.G.A. § 9-14-3

The application for the writ of habeas corpus must be a petition in writing, signed by the applicant, his or her attorney or agent, or some other person in his or her behalf, and must state:

⁵ The use of habeas corpus to challenge quarantine has long been recognized at the common law. *See Opinion on the Writ of Habeas Corpus*, 97 Eng. Rep. 29, 36-37 (H. L. 1758) (Wilmot, J.)(use of writ to challenge quarantine requires a showing that the detention is unlawful); *In re Halko*, 246 Cal. App. 2d 553, 558 (Cal. Ct. App. 1966)(“a person quarantined without reasonable grounds is entitled to relief by habeas corpus...”); *In re Smith*, 146 N.Y. 68, 73 (N.Y. 1895)(granting writ of habeas corpus to discharge individuals held in quarantine).

1. The name or description of the person whose liberty is restrained;
2. The person restraining, the mode of restraint, and the place of detention as nearly as practicable;
3. The cause or pretense of the restraint. If the restraint is under the pretext of legal process, a copy of the process must be annexed to the petition if this is within the power of the applicant;
4. A distinct averment of the alleged illegality in the restraint or of any other reason why the writ of habeas corpus is sought; and
5. A prayer for the writ of habeas corpus.

D. What is the procedure for bringing a Habeas Corpus Petition in a public health case? O.C.G.A. § 9-14-3

1. Filing a Petition

As noted above, the petitioner must file the petition with the proper court sitting in the judicial circuit in which he is restrained and include the relevant information. The petition must be verified by the oath of the applicant or some other person on his behalf. O.C.G.A. § 9-14-4.

The court shall grant the writ of habeas corpus when it appears that the restraint of liberty is illegal. The granting of the writ requires the person restraining or detaining the person to bring that person before the court for the purpose of examining the cause of the detention. O.C.G.A. § 9-14-5. The form of the writ is detailed in O.C.G.A. § 9-14-6.

2. Return on Writ or Rule to Show Cause and Hearing

The return day of the writ of habeas corpus is always within 20 days after the presentation of the petition for civil cases and within 8 days for criminal cases. O.C.G.A. § 9-14-7.

The return of the party served with the writ may be made at the time and place specified by the court. Two days from the time of service must be allowed for every 20 miles which the party has to travel from the place of detention to the place appointed for the hearing. If service has not been made a sufficient time before the hearing to cover the time allowed to reach the place of hearing, the return shall be made within the time so allowed immediately after the service. O.C.G.A. § 9-14-10.

Every return to a writ of habeas corpus must be under oath. If the return admits the custody or detention of the party on whose behalf the writ

issues, his body must be produced unless prevented by providential cause or prohibited by law. O.C.G.A. § 9-14-11. If the return denies the custody or detention of the person in question, it must state distinctly the latest date (if ever) at which custody was had and when and to whom custody was transferred. O.C.G.A. § 9-14-12.

3. Service and Notice

The writ of habeas corpus is served by delivering of a copy of the writ to the respondent by any officer authorized to make a return of any process or by any other citizen. If personal service cannot be effected, the writ may be served by leaving a copy at the house, jail, or other place in which the party on whose behalf the writ issues is detained. O.C.G.A. § 9-14-8.

4. Burden on Proof and Persuasion

The burden is on the habeas petitioner to prove the illegality of the detention by a preponderance of the evidence. See St. Lawrence v. Bartley, 269 Ga. 94, 97 (1998).

5. Right to Counsel

Because habeas corpus is a civil remedy, there is no constitutional right to court-appointed counsel. See Fullwood v. Sivley, 271 Ga. 248, 253 (1999).

6. Conduct of Hearing

If the return denies any of the material facts stated in the petition or alleges other facts upon which issue is taken, the judge hearing the return may in a summary manner hear testimony as to the issue. To that end, he may compel the attendance of witnesses and the production of papers, may adjourn the examination of the question, or may exercise any other power of a court which the principles of justice may require. O.C.G.A. § 9-14-14.

E. What remedies are available to the Court?

The judge hearing the return may discharge, remand, or admit the person in question to bail or may deliver him or her to the custody of the officer or person entitled thereto, as the principles of law and justice may require. O.C.G.A. § 9-14-19. The judge may not discharge a person when it appears that the detention is authorized by law or when the detention is the result of certain procedural defects enumerated in O.C.G.A. § 9-14-16.

F. What enforcement mechanisms are available to the Court?

Any person disregarding the writ of habeas corpus in any manner whatever may be liable to attachment for contempt, issued by the judge granting the writ, under which attachment the person may be imprisoned until he or she complies with the legal requirements of the writ. O.C.G.A. § 9-14-23.

SECTION 2.0 LEGAL ISSUES IN A PUBLIC HEALTH CONTEXT

Section Georgia Public Health Infrastructure 2.1

2.11 Introduction

Georgia's Public Health Infrastructure consists of the Georgia Department of Human Resources and its subdivisions, County Boards of Health, and local public health authorities. During an emergency, these entities are supported by a number of other state agencies and voluntary organizations.

2.12 The Georgia Department of Human Resources

A. Structure

The Georgia Department of Human Resources ("DHR"), a department of the Office of the Governor, was created by the Governmental Reorganization Act of 1972. (O.C.G.A. § 31-2-1). This Act, sponsored by then Governor Jimmy Carter, consolidated the Departments of Public Health, Family and Children Services and other agencies into one comprehensive health and social services agency. DHR manages programs intended to control the spread of disease, enable older people to live at home longer, prevent children from developing lifelong disabilities, protect children from abuse and neglect, provide families with a variety of financial and non-financial supports, train single parents to find and hold jobs, and help people with mental or physical disabilities live and work in their communities. (DHR website homepage).

DHR is governed by a 17 member Board charged with setting DHR policy and approving the department's goals and objectives. The board is appointed by the Governor, and its members serve five-year terms. DHR has a commissioner who

serves as the department head. The Commissioner is appointed by the Board, subject to the approval of the Governor. O.C.G.A. §§ 49-2-1 to 49-2-3.

B. Duties

Under the Georgia Emergency Operations Plan, DHR has primary responsibility for Mass Care, Housing, and Human Services (ESF-6) and Public Health and Medical Services (ESF-8). Mass Care encompasses: sheltering, feeding, first aid, and Disaster Welfare Inquiry to reunite families or inform family members outside the disaster area. The American Red Cross is the principal voluntary organization supporting DHR in these efforts.

The Public Health and Emergency Medical Services Function includes: emergency medical services, hospitals, clinics, first aid stations, facilities, and medical care, including doctors, nurses, allied health professionals, technicians and support staff, supplies, pharmaceuticals, vaccines, equipment, immunizations, and related services. This ESF also includes staff, equipment, supplies, and services used in the detection, investigation, and control of diseases and health conditions. ESF-8 also encompasses environmental health, which addresses staff, equipments, and supplies essential to (1) prevent communicable diseases and contamination of food and water, and (2) develop and monitor health information, inspection and control of sanitations measures, inspection of individual water supplies, disease vector and epidemic control, laboratory testing, and facility and shelter inspections. This function also includes addressing mental health concerns arising from emergency and disaster. A list of the agencies supporting DHR in this ESF appear in the Appendix.

To date DHR is beginning to promulgate rules for management of its response in a declared public health emergency. Recently, DHR has released its Pandemic Influenza Standard Operating Plan.⁶ O.C.G.A. § 31-12-2.1 states that the department shall promulgate such rules with particular regard to coordination of its response in consultation with the Georgia Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture and the federal Centers for Disease Control and Prevention. O.C.G.A § 31-12-4 states that DHR shall promulgate rules and regulations relating to isolation and quarantine in a declared public emergency. The lack of regulation is a gap in the department's response plan, however, this deficiency is mitigated by the provision at O.G.C.A. § 31-12-2.1 which gives the department the power to adopt and implement emergency rules and regulations in the event of a public health emergency.

The department has not prepared a draft executive order for the declaration of a public health emergency as called for in O.C.G.A. § 31-12-2.1. In the absence of

⁶ See <http://health.state.ga.us/pandemicflu/>

a draft declaration of public health emergency, the department will be required to draft an order as the emergency event is unfolding.

The department's lack of regulations dealing with social distancing will present difficulties both in implementation and enforcement. Without regulations, lines of authority may be confused and if the orders are challenged, may pose a hurdle in having the order upheld by an administrative law judge or superior court judge. The department can promulgate emergency rules and regulations under the state Administrative Procedure Act. O.C.G.A. §§ 50-13-1, et seq. The difference between an emergency rule adopted under the provisions of the APA in the absence of a declared public health emergency is that if no public health emergency has been declared the rules will stay in effect for not longer than 120 days whereas if the emergency rule is adopted pursuant to a declaration of public health emergency it will remain in effect for the duration of the emergency declaration plus 120 days thereafter. (A declaration of emergency may not last longer than 30 days unless renewed by the Governor.)

In the absence of a declared state of emergency the department (DHR) has broad power to protect the health of the people of the state including the power to restrict movement of persons. DHR is charged with safeguarding and promoting the health of Georgia residents and is empowered to do so through "all legal means appropriate to that end." O.C.G.A. § 31-2-1. O.C.G.A. §31-3-4 defines the powers of the county board of health, specifically, giving it power to "take steps necessary to prevent and suppress disease and conditions deleterious to health". Additionally, the department may require measures to prevent the conveyance of infectious matter from infected persons to other persons as may be necessary and appropriate. O.C.G.A. §31-12-3.

The department and the county boards of health may require segregation and isolation of persons with communicable diseases or conditions likely to endanger the health of others. O.C.G.A. § 31-12-4. Further, the department may isolate and treat persons afflicted with a communicable disease who are unable or unwilling to observe the department's rules and regulations for the suppression of such disease. O.C.G.A. § 31-2-1(4).

The department may require quarantine or surveillance of carriers of disease and persons exposed to, or suspected of being infected with, infectious disease until they are found to be free of the infectious agent or disease in question. O.C.G.A. § 31-12-4. The department may impose complete or modified quarantine, isolation or surveillance of persons exposed to a communicable disease. O.C.G.A. § 31-2-1(4). A board of health and wellness has the authority to declare and enforce quarantine. O.C.G.A. § 31-3-2.1(c)(1).

Under the authorities cited above, the department has broad authority to issue orders for quarantine and isolation as does the lone board of health and wellness of Fulton County. The county boards of health may isolate infected persons for

treatment and protection of the population from disease transmission by the infected person.

There is no specific provision in the law for a distinction between group and area quarantine, however, in a section describing the duties and functions of the department, O.C.G.A. § 31-2-1(4) states that the department may establish “complete or modified quarantine.”

If a person violates an order of the department it can seek injunctive relief in any court of competent jurisdiction and the violation of that order would be punishable as for contempt of court. O.C.G.A. § 31-5-9.

DHR also is empowered, without limitation to:

- Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease . . . and provide research, conduct investigations, and disseminate information concerning reduction in the incidence and proper control of disease;
- Forestall and correct physical, chemical, and biological conditions that, if left to run their course, could be injurious to health;
- Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department’s rules and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to a disease communicable to man;
- Require immunization and other preventive measures;
- Contract with county boards of health to assist in the performance of services incumbent upon them . . . and, in the event of grave emergencies of more than local peril, to employ whatever means may be at its disposal to overcome such emergencies;
- Contract and execute releases for assistance in the performance of its functions and the exercise of its powers and to supply services which are within its purview to perform;
- Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of disease and conditions deleterious to health or to determine compliance with health laws and rules, regulations, and standards thereunder.

O.C.G.A. § 31-2-1; O.C.G.A. § 31-12-3.

2.13 The Georgia Division of Public Health

A. Structure

The Director of Public Health leads the Georgia Division of Public Health (DPH) and serves at the discretion of the Commissioner of DHR. There are approximately 6,800 state and county public health employees in DPH's state and local offices. *The Georgia Department of Human Resources Organization Chart, June 2007; The Division of Public Health Organization Chart.*

DPH administers its programs and services in 18 Public Health Districts and 159 county health departments across Georgia. Every county in the state falls within a Public Health District. *The Georgia Department of Human Resources, Division of Public Health, District Map, June 2006.* The DHR Commissioner and the Director of DPH appoints one District Health Director per district who is responsible for managing the staff and resources allocated to each District; proposing rules, regulations and policy; preparing and presenting studies on community health status, needs and resources; and representing local interests to DHP and DHP interests to local authorities. *Board of Health Handbook For Members of County Boards of Health in Georgia, The Georgia Department of Human Resources, Division of Public Health, July 2004, p. 9.* County public health departments also offer direct healthcare to low-income people and people in underserved areas of the state, and work with private medical providers to assure that these groups receive needed care. *DHR Division of Public Health Fact Sheet at 1.*⁷

B. Duties

DPH is responsible for disease control and prevention, the reduction of avoidable injury-related deaths and disabilities, and the promotion of healthy lifestyles. *Georgia Department of Human Resources, Division of Public Health, Fact Sheet, February 2006.* DPH administers services and programs designed to (1) assess the health status of Georgia residents, (2) establish and implement sound public health policy, and (3) provide resources and skills necessary for remaining healthy. As a unit of DHR, DHP operates under the same statutory authority granted the DHR. *See O.C.G.A. § 31-2-1.*

⁷ See <http://health.state.ga.us/aboutgdph.asp>

2.14 County/Municipal Health Departments

A. Structure

DHR contracts with County Boards of Health (“CBOHs”) which have existed since 1914. *Board of Health Handbook for Members of County Boards of Health in Georgia* (“CBOH Handbook, July 2004, p.4 ;O.C.G.A. § 31-2-1(9).

These contracts are formalized annually in a Master Agreement between the DHR and each CBOH and is the foundation for Georgia’s statewide public health system. *CBOH Handbook*, p.4. Through these Master Agreements, CBOHs assume increased responsibility for disease prevention and treatment in their communities. *Id.*

1. Board Membership

CBOH members are either appointed for six-year terms, or serve as part of their official duties in another capacity. O.C.G.A. §31-3-2 specifies that each CBOH shall be composed of seven members who are named to represent different, identified facets of the community (County, School System and City).

Board members must consist of: (1) the county’s chief executive officer (“CEO”) or their designee; (2) a licensed physician, actively practicing in the county (or in a county with less than four physicians, a licensed nurse or dentist or another person may be selected); (3) a health services consumer or a health services consumer advocate; (4) a consumer representing the needy, underprivileged or elderly; (5) the superintendent of the school system or their designee. (6) the CEO of the county’s largest municipality (or their designee); and (7) a person interested in promoting public health who is a consumer or licensed nurse.

2. Relationship with Public Health Districts

No statutory guidance delineates the role of the CBOH the relationship among the CBOH, the District Health Director, and the county public health staff. Nevertheless, these public health representatives often work closely together. For example, the CBOH must approve the selection of the District Health Director. The District Health Director manages the staff and resources available to each CBOH and proposes rules and policies to the CBOH for approval, and the District Health Director often acts as a liaison between the CBOH and DPH.

B. Duties

Pursuant to O.C.G.A. § 31-3-4, CBOHs are empowered to:

- Establish and adopt bylaws for its own governance. Meetings shall be held no less frequently than quarterly;
- Exercise responsibility and authority in all matters within the county pertaining to health unless the responsibility for enforcement of such is by law that of another agency;
- Take such steps as may be necessary to prevent and suppress disease and conditions deleterious to health (including imposing requirements that individuals be isolated, quarantined, vaccinated or take other preventive measures pursuant to O.C.G.A. §§ 31-12-3 and 31-12-4) and determine compliance with health laws, rules, regulations and standards adopted thereunder;
- Adopt and enforce rules and regulations appropriate to its function and powers (examples include tobacco control or clean indoor air), provided such rules and regulations are not in conflict with the rules and regulations of the Department;
- Receive and administer all grants, gifts, moneys and donations for purposes pertaining to health pursuant to this chapter;
- Make contracts and establish fees for the provision of public health services; the CBOH sets fees for environmental health inspections services (with approval from the County Commission) and adopts a sliding fee scale for clinical services provided. No one may be denied service on the basis of inability to pay. O.C.G.A. §31-3-4(6); and
- Contract with the Department of Human Resources or other agencies for assistance in the performance of its functions.

Moreover, pursuant to O.C.G.A. § 31-3-5, CBOHs must discharge, within their jurisdiction, the following functions:

- Determine the health needs and resources of its jurisdiction by research and by collection, analysis, and evaluation of all data pertaining to the health of the community;
- Develop, in cooperation with the department, programs, activities and facilities responsive to the needs of its area;
- Secure compliance with the rules and regulations of the department that have local application; and

- Enforce all laws pertaining to health unless the responsibility for the enforcement of such laws is that of another county or state agency.

Other CBOH responsibilities include:

- Building coalitions and collaborating with other health providers to respond to the health needs in their county. Historically, most counties have not been able to meet all of the health needs in their counties, mainly due to a lack of sufficient funds. Consequently, the need for building coalitions in the community is important, and often underlies the effectiveness of Boards of Health in meeting many of the health needs of their community.
- Assuming “lead county” responsibilities. Lead counties have been established to achieve administrative efficiencies within the districts and to facilitate and administer district-wide or multi-county programs. These are usually larger counties that will provide certain technical and administrative services to smaller, less populated counties.

Board of Health Handbook for Members of County Boards of Health in Georgia, Division of Public Health, Georgia Department of Human Resources, July 2004, p.5

2.15 Local Health Authorities (Boards or departments that operate outside of the Act)

A. Structure

For the purposes of this bench book, the local boards or departments of health are referred to as *local health authorities*. The specific structure of each local health authority is determined by local regulations and ordinances. Usually, a health officer or director of public health or other individual is appointed to supervise the public health activities of a local health authority.

B. Duties

Local health authorities provide limited public health services. The specific duties performed by local health authorities are determined by city codes and by local rules and ordinances. Local health authority duties may include inspections, assessments of community health needs, food service inspections, training and consultation for operators and personnel of food establishments, investigation and follow-up of public health complaints, communicable disease investigation and reporting, implementation of timely, effective and efficient control measures, participation in epidemiologic studies and providing information to the community which promotes disease prevention and health promotion.

2.16 Other entities performing public health duties

There are other state agencies with jurisdiction that supplements that of DHR and the CBOHs. For example, Georgia also has a Department of Community Health. O.C.G.A. §§ 31-5A-1 to 31-5A-6. This agency was created in 1999 to serve as the lead agency for health care planning and purchasing issues in the state. *A Snapshot of the Georgia Department of Community Health*, The Georgia Department of Community Health, January 2007. The Department of Community Health is the single state agency responsible for administering the Medicaid program. DCH also administers PeachCare for Kids, and the Medicaid Waiver Program. The Department of Community Health is governed by a nine-member board appointed by the Governor, and operates under the direction of a Commissioner, also appointed by the Governor. *Id.* O.C.G.A. § 31-5A-6.

In addition, the Georgia Emergency Operations Plan lists numerous support agencies upon which DHR may call in the event of emergency. See the Appendix for a list of Support Agencies from ESF-8.

SECTION 2.0 LEGAL ISSUES IN A PUBLIC HEALTH CONTEXT

SECTION 2.2 Jurisdiction

2.21 The role of the federal government

A. The United States Constitution

The preamble to the Constitution speaks generally to the Federal Government's interest in promoting the general welfare of its citizens. More specifically, Article 1, § 8 of the Constitution contains two provisions allowing the Federal government to regulate activities that directly impact public health. First, the Commerce clause gives Congress the power to regulate commerce with foreign nations, between the states, and with Native American tribes. U.S. Const., Art. 1, § 8, cl. 3. Second, The General Welfare Clause empowers Congress to levy and collect taxes for the general welfare of the United States. U.S. Const. Art. 1, § 8, cl. 1. It is through these express Constitutional provisions that Congress enacts laws affecting public health.

B. Federal Constitution Generally Silent

The preamble's stated purpose of promoting the "general Welfare" is the closest the Constitution comes to addressing public health. The remainder of the Constitution, including the Amendments, provides no role for the Federal government in matters of public health. This silence, viewed in conjunction with the Tenth Amendment's reservation on undelegated powers to the states, indicates that the Federal government's public health powers extend only to the boundaries permitted by its defense, interstate commerce, and tax powers. *See, e.g., Carolene Products Co. v. Evaporated Milk Assn.*, 93 F.2d 202, 204 (7th Cir. 1937). ("While the police power is ordinarily said to be reserved by the states, it is obvious that it extends fully likewise to the federal government in so far as that government acts within its constitutional jurisdiction. . . The police power referred to extends to all the great public needs. . . Its dimensions are identical with the dimensions of the government's duty to protect and promote the public welfare." (Internal citations omitted.)). In addition, the Federal Government is responsible for protecting the public health in discrete geographic areas directly under its control (e.g., military bases).

C. Exemplary Federal Public Health Powers

Pursuant to its itemized powers, the Federal government may, for example, assume responsibility for public health emergencies precipitated by acts of war or terrorism.

2.22 The role of the State of Georgia

Powers not specifically delegated to the Federal government by the United States Constitution, nor prohibited by it, are reserved to the States. U.S. Const., amend. X. All laws enacted in the State of Georgia are presumed to be constitutional, including those impacting public health. Georgia bears primary responsibility for preventing and responding to threats to the public's health. *See, e.g., Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905) (“The safety and health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government.”); *Compagnie Francaise de Navigation à Vapeur v. State Board of Health*, 186 U.S. 380, 387 (1902) (“That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question.”). Moreover, Georgia almost certainly be required to provide significant assistance and resources during public health emergencies falling within the federal government's jurisdiction.

A. The Georgia Constitution

The Georgia constitution does not specifically address the role that the State is to have regarding public health laws. However, the Georgia Constitution references a general duty to protect its citizens. Ga. Const. Art. I, § 2, Par. 2.

B. States have historically assumed a primary role in public health issues

States have historically borne much of the responsibility for preventing and responding to public health threats. In *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), the plaintiff objected to a small pox vaccine requirement, but emphasized that “The safety and health of the people. . . [are] for [the state] to guard and protect. They are matters that do not ordinarily concern the National Government.” *Jacobson*, 197 U.S. at 38. In another case, the Supreme Court recognized the well-established principle that States have the authority to enact public health laws, including those involving quarantine. “[U]ntil Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the

Constitution of the United States. . . “ Compagnie Francaise de Navigation a Vapeur v. State Bd. Of Health, 186 U.S. 380, 387 (1902).

C. Source of the State’s Public Health Authority

1. Police Power

Police power gives the government the right to protect the public’s safety, health and morals by restraining and regulating the use of liberty and property. See Medtronic, Inc. v. Lohr, 518 U.S. 470, 475 (1996). Georgia courts have repeatedly recognized that the State’s obligation to preserve public health appropriately includes exercise of its inherent police power as a sovereign entity. See e.g., Whitaker v. Houston County Hospital Authority, 272 Ga. App. 870, 875 (2005). A valid exercise of police power is within the scope of the police power if the action substantially relates to public, health, safety, or general welfare. Where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for the determination of the Courts, but for the legislative body with responsibility for the decision. Atlanta Taxicab Owners Ass’n, Inc. v. City of Atlanta, 281 Ga. 342, 348-49, 638 S.E.2d 307, 348 (2006).

To justify the state using police power as State (1) must be acting in the public’s interest in general (as opposed to a particular class of people) and (2) must be using means that are reasonable necessary to accomplish its goal and are not unduly oppressive. See Lawton v. Steele, 152 U.S. 133, 137 (1894).

2. The Doctrine of *Parens Patriae*

The phrase *parens patriae* literally means “father of the country.” The doctrine is derived from the English constitutional system wherein the King retained certain powers in his capacity as the “father” of his country. See Blackburn v. Blackburn, 249 Ga. 689, 692 n.5, 292 S.E.2d 821 (1982). In common law, this concept allows the State to take care of persons who are otherwise legally unable to take care of themselves. The doctrine of *parens patriae* evolved to also allow the State to intervene when it has a “quasi-sovereign” interest; that is, the State may take action when it believes that the health and well being of its citizens may be at stake. See Alfred L. Snap & Son, Inc. v. Puerto Rico, 458 U.S. 592, 602, 607 (1982); see also State of Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907).

SECTION 2.0 LEGAL ISSUES IN A PUBLIC HEALTH CONTEXT

SECTION 2.3 Costs and Compensation

2.31 Georgia Statutes

A. Abatement

In counties having a population in excess of 450,000 according to the United States decennial census of 1980 or any subsequent census, DHR or the CBOH may bring an action to abate a condition injurious to the public health in Superior Court. O.C.G.A. § 31-5-10 et. seq. Any cost incurred “to abate such public nuisance” shall constitute a lien against the property at issue, and such lien shall have the same status and priority as a lien for taxes. O.C.G.A. § 31-5-10(d).

B. Diagnosis, Testing and Treatment of Venereal Disease or other disease

DHR and CBOHs are empowered to make examination of a person suspected of being infected with venereal disease, to require an infected person to report to a licensed physician for treatment until cured, or to submit to treatment provided at the public expense. O.C.G.A. § 31-17-3.

DHR and CBOHs are also empowered to make examination of persons suspected of being infected with HIV and to administer an HIV test with consent of the person being tested. O.C.G.A. § 31-17A-2 There is no statutory provision, however, empowering DHR or CBOHs to require that a person receive treatment from a licensed physician or directly addressing the cost of providing treatment. In cases where a person refuses to be tested for HIV, DHR or a CBOH may petition a superior court for an order requiring such testing, and in cases where a person tests positive for HIV, a court may also order “such procedures to protect the public health consistent with the least restrictive alternative which is available within the limits of state funds specifically appropriated therefore.” O.C.G.A. § 31-17A-3(c).

C. Involuntary medical testing

There is no information for this section at this time.

D. Temporary closures of private property and commandeering property by the Governor

The Governor may for such period during which a state of emergency or disaster exists seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law. O.C.G.A. § 38-3-51(c)(2). In addition, the Governor may sell, lend, give, or distribute all or any such property among the inhabitants of the state and to account to the proper agency for any funds received for the property. *Id.* at (3). And the Governor may commandeer or utilize private property if he or she finds this necessary to cope with the emergency or disaster. O.C.G.A. § 38-3-51(d)(4).

E. The right to appointed legal counsel for individuals quarantined or isolated under Emergency Powers Act or other Executive Powers Acts

Georgia law does not directly address the right to appointed legal counsel for individuals quarantined or isolated. The Emergency Management Act does state, however, that DHR shall permit *access to counsel* consistent with maintenance of appropriate quarantine rules, O.C.G.A. § 38-3-51(i)(2)(A), and that upon a challenge to an order of quarantine, a judge “may proceed *ex parte* with respect to the state or may appoint counsel to represent the interests of the state *or other unrepresented parties.*” O.C.G.A. § 38-3-51(i)(2)(C) (emphasis added).

2.32 Costs incurred during the taking of property

A. When Property is the danger

When the property itself is a danger, the government’s action to abate or destroy the property is not a taking and the property owner is usually not entitled to financial compensation. *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992); *Muglar v. Kansas*, 123 U.S. 623, 668-69 (1887). Whether a taking has occurred must be determined in light of the particular facts and circumstances of the case. *See U.S. v. Pewee Coal Co.*, 341 U.S. 114, 117 (1951).

B. Temporary closure

It is likely that a temporary closure of private property or the commandeering of property would be considered to be a governmental taking. A taking is the government’s removal of unoffending property from an innocent owner (as opposed to the removal of property which itself constitutes a danger). *See Muglar*, 123 U.S. at 668-69.

C. Physical Invasion

If a regulation authorizes the physical invasion of private property, no matter how slight, a taking has occurred. *See* Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 422 (1982).

2.33 Compensation

A. Fifth Amendment

The Fifth Amendment to the United States Constitution protects persons from a governmental taking of property without just compensation. This provision of the Fifth Amendment is applicable to the states by the Fourteenth Amendment. *See* Chicago B & O R. Co. v. Chicago, 166 U.S. 226 (1897). The Constitutional guarantee of compensation is designed to temper the government from forcing some people alone from shouldering burdens which should be borne by the public as a whole. *See* Penn Central Transp. Co. v. City of New York, 438 U.S. 104, 123-24 (1978). Similarly, Article 1, § III, Par. I of the Georgia Constitution prohibits the taking of private property for public use without just compensation.

B. Emergency or Wartime

In emergency and wartime situations, a property owner may not be entitled to compensation from the government when a taking occurs. *See, e.g.* U.S. v. Caltex, 344 U.S. 149 (1952) (oil companies were not entitled to compensation for oil terminal facilities destroyed by the Army during wartime since the destruction was necessary to thwart the approaching enemy); National Bd. Of YMCA v. U.S., 395 U.S. 85 (1969) (rioting occurred in Panama resulting in the destruction of some of the petitioner's buildings. The petitioner's claim was denied since the Constitution does not require compensation every time violence against the government damages or destroys private property); and, Juragua Iron Co. v. U.S., 212 U.S. 297 (1909) (during war with Spain, the United States government destroyed property suspected of containing "yellow fever germs" that was owned by an American company in Cuba. Cuba was a territory of Spain. No compensation was required since the American company was an enemy of the United States with respect to the Cuban property).

C. Reasonable Value

Ordinarily, compensation for a temporary possession of a business enterprise is the reasonable value of the property's use. *See* Pewee Coal Co., 341 U.S. at 117.

2.34 Costs incurred during quarantines and isolations

A. Food, medicine and necessities

In some states the governmental unit ordering isolation or quarantine has been recognized as having a duty to furnish food and other necessities during the period of confinement if the restricted individual cannot afford the items. *See* Smith v. Hobbs, 119 Ga. 96, 45 S.E. 963 (1903).

B. Loss of income and other support

In addition to expenses connected with food, medicine and other necessities, confined individuals could experience financial challenges due to loss of income, childcare expenses and eldercare costs. *See e.g., Phelps v. School District*, 221 Ill. App. 500, (Ill. Ct. App. 4th Cir. 1921)(where a teacher was awarded compensation for her salary when a school was closed for two months due to an influenza epidemic).

SECTION 2.0 LEGAL ISSUES IN A PUBLIC HEALTH CONTEXT

SECTION 2.4 Emergency Declaration

2.41 Authority to declare an emergency

By law, the Governor, the President of the United States, officials of various political subdivisions in the State of Georgia, and the Secretary of Health and Human Services are each authorized to declare emergencies in Georgia.

Statutory authority to respond to an emergency is given to the Governor, political subdivisions, and the Georgia Emergency Management Agency (“GEMA”) under the Georgia Emergency Management Act of 1981, O.C.G.A. § 38-3-1 et seq. The President of the United States has authority to respond to an emergency through The Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 100-707, 42 U.S.C. §§ 5121 et seq. (“The Stafford Act”).

During a widespread disaster or emergency, Federal, State and local laws could be simultaneously invoked in the name of public health and safety. Federal law authorizes cooperation between the States and the Federal governments. 42 U.S.C. § 243.

A. Emergency declared by the Governor

In Georgia, the Governor is responsible for declaring that a state of emergency or disaster exists. O.C.G.A. § 38-3-51(a). The declaration of a state of emergency or disaster shall activate the state or local emergency disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plan applies and the distribution of materials. O.C.G.A. § 38-3-51(b). The Governor is authorized to declare a state of emergency at his or her discretion, but a condition precedent to declaring a public health emergency, the Governor must call for a special session of the General Assembly by 8:00 a.m. on the second day after the declaration. O.C.G.A. §38-3-51(a). The General Assembly can terminate the state of public health emergency at any time. O.C.G.A. §38-3-51(a). This limitation is deemed a requirement of Article V, Section II, Paragraph VII of the Constitution of Georgia.

In a declared state of emergency, the Governor may “perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.” O.C.G.A. § 38-3-51(c)(4). This

discretion includes the ability to “[u]tilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency or disaster.” O.C.G.A. § 38-3-51(d)(2).

The Governor has general direction and control of the Georgia Emergency Management Agency (“GEMA”), and in the event of a disaster or emergency beyond local control, the Governor may assume direct operational control over all or any part of the emergency management functions within the state. O.C.G.A. § 38-3-22(a). The Governor has broad power to delegate to any state agency or political subdivision his powers under the above statute. During a public health emergency, public health activities will be coordinated as outlined in the Public Health Emergency Operations Plan which provides guidance to the Division in its role as the lead in Emergency Support Function (ESF) 8, as designated by DHR.

B. Emergency declared by a political subdivision

The Georgia Code defines political subdivisions as cities having a population of over 1,000, cities having a population of less than 1,000 in which the Governor has established a local organization, or counties. O.C.G.A. §38-3-3(5)(A-C). While political subdivisions of the state have been granted certain duties and responsibilities in order to provide effective and orderly governmental control and coordination of emergency operations, no provision expressly authorizes political subdivisions to declare a local disaster emergency.

C. Emergency declared by Chief Justice/Chief Judge

Where a state of emergency has been declared by the Governor, either the Chief Justice of the Georgia Supreme Court, the Chief Judge of the Georgia Court of Appeals or a chief judge of a Georgia superior court judicial circuit may declare a “Judicial Emergency” if the normal functioning of the judicial system, the ability of persons to avail themselves of the judicial system, or if the ability of litigants or others to have access to the courts or to meet court ordered or statutory deadlines is substantially endangered or infringed upon. O.C.G.A. § 38-3-60.

In declaring a “Judicial Emergency”, a judge is permitted to suspend, toll, extend or otherwise grant relief from deadlines or other time schedules or filing requirements imposed by statute, rule, regulation or court order. Such deadlines include, but are not limited to, statutes of limitation, the time within which to issue a warrant, the time within which to try a case within which a demand for speedy trial has been made, the time within which to hold a commitment hearing, the deadline or other schedule regarding the detention of a juvenile, the time within which to return a bill of indictment or accusation or to bring a matter before a grand jury, the time within which to file a writ of habeas corpus, the time within which discovery or any aspect thereof is to be completed, the time within which to serve a party, the time within which to appeal or to seek the right to appeal any order, ruling or other determination

and such other legal proceedings as determined to be necessary by the authorized judicial official. O.C.G.A. § 38-3-62.

D. Emergency declared by the President of the United States

The Stafford Act provides for assistance by the Federal government to State and local governments to alleviate suffering and damages resulting from disasters. 42 U.S.C. § 5121. A governor must first ask the President to issue a declaration that an emergency or a major disaster exists. An emergency is defined as any occasion that the President determines Federal assistance is needed to supplement State and local efforts to save lives, to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. 42 U.S.C. § 5122(1). A major disaster includes any natural catastrophe fire, flood, or explosion in any part of the United States which, in the determination of the President, causes damage to warrant major disaster assistance under the Stafford Act. 42 U.S.C. § 5122(2).

The Governor's request must describe the severity of the disaster (i.e., that an effective response is beyond the capabilities of the State and local governments and that Federal assistance is necessary), include that the governor has taken appropriate response action under state law and the State's emergency plan, and contain information concerning the nature and amount of State and local resources committed to the disaster. 42 U.S.C. § 5170.

The President can also determine that an emergency exists when it involves a subject area under which the United States exercises exclusive or preeminent responsibility and authority (such as a federal building). 42 U.S.C. § 5191(b).

E. Emergency declared by the Secretary of Health and Human Services

If the Secretary of Health and Human Services determines, after consultation with public health officials, that a disease or disorder presents a public health emergency or if a public health emergency exists (including a significant outbreak of an infectious disease or bioterrorist attack), the Secretary can take appropriate action to respond, which includes investigations into the cause, treatment or prevention of a disease. 42 U.S.C. § 247d(a). This term is not statutorily defined.

2.42 Changes in Governmental Powers during a State of Emergency

Generally, the Georgia Emergency Management Act of 1981, O.C.G.A. § 38-3-1 *et seq.*, sets forth the manner in which the State of Georgia manages emergency situations. The Act includes preliminary provisions that provide for the liberal interpretation of the Act in order to facilitate government action during a state of emergency. *See* O.C.G.A. § 38-3-6. Moreover, the Act empowers the Director of Emergency Management to promulgate

such rules and regulations as may be required to effectuate the purposes of emergency management, subject to approval of the Governor. O.C.G.A. § 38-3-21.

The following is a summary of changes in governmental powers during an emergency:

A. Suspension of Laws

The Governor may suspend any regulatory statute prescribing the procedures for conducting state business, or the orders, rules or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster. O.C.G.A. § 38-3-51(d)(1).

B. The temporary suspension of formal requirements

During an emergency, the Governor is authorized and empowered to make, amend, and rescind necessary orders, rules, and regulations to effectuate Georgia's emergency plan with due consideration to the plans of the federal government. O.C.G.A. §38-3-22(b)(1). The Governor may also suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster. O.C.G.A. §38-3-51 (d)(1).

Georgia law also provides, notwithstanding any other provisions of law, the governing authority of any county or municipality may provide by ordinance for a program of emergency registration of all or certain designated classes of businesses doing business in the county or municipality during a state of emergency declared by the Governor. Such ordinance may be implemented for a period during which the state of emergency continues and for a subsequent recovery period of up to three months at the direction of the governing authority. In any county or municipality adopting such an ordinance, no business subject to the ordinance may do business in the county or municipality without first registering in conformance with the provisions of the ordinance. O.C.G.A. § 38-3-56.

The judicial system “is authorized to suspend, toll, extend, or otherwise grant relief from deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters.” *See* O.C.G.A. § 38-3-62.

C. The Governor as Commander-in-Chief

O.C.G.A. §38-2-6(a) provides that the Governor has the power, in case of invasion, disaster, insurrection, riot, breach of the peace, or opposition to enforcement of the law by force or violence, or imminent danger thereof, or other grave emergency, to

order all or any part of the organized militia into the active service of the state for such period, to such extent, and in such manner as he deems necessary. Such power includes ordering the organized militia to function under the operational control of the United States army, navy, or air force commander in charge of the defense of any area within Georgia that is invaded or attacked or is or may be threatened with invasion or attack.

Whenever any judge of a superior, city, or state court, sheriff, or mayor of a municipality learns of such imminent danger, they have a duty, when it appears that the unlawful combination or disaster has progressed beyond the control of the civil authorities, to notify the Governor, and the Governor may then, in his discretion, order into the active service of the state for such period, to such extent, and in such manner as he or she may deem necessary all or any part of the organized militia. O.C.G.A. § 38-2-6(b).

When the Governor orders into the active service of the state all or any portion of the organized militia, he or she shall declare a state of emergency in such locality and it shall be the duty of the Governor to confirm such declaration and order in writing which shall state the area into which the force of the organized militia has been ordered. O.C.G.A. § 38-2-6(c).

D. Using State of Georgia Resources

A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available. O.C.G.A. § 38-3-51(b).

E. Using State of Georgia Personnel

During a declared state of emergency, the Governor may assume direct operational control of all civil forces and helpers in the state. O.C.G.A. § 38-3-51(c)(1).

F. Commandeering Property

The Governor may for such period during which a state of emergency or disaster exists, seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law. O.C.G.A. § 38-3-51(c)(2). In addition, the Governor may sell, lend, give, or distribute all or any such property among the inhabitants of the state and to account to the proper agency for any funds received for the property. O.C.G.A. § 38-3-51(c)(3). The Governor may commandeer or utilize private property if he or she finds this necessary to cope with the emergency or disaster. O.C.G.A. § 38-3-51(d)(4).

G. Evacuation

The Governor has authority to direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if necessary to preserve life or for mitigation, response or recovery. The Governor also is authorized to prescribe routes, modes of transportation, and destinations in connection with evacuations. O.C.G.A. § 38-3-51(d)(5-6).

H. Ingress and Egress

The Governor's discretion regarding evacuation includes the ability to "[p]rescribe routes, modes of transportation, and destinations in connection with evacuation:" and to "[c]ontrol ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein." O.C.G.A. § 38-3-51(d)(5), (6) & (7).

I. Alcoholic Beverages, Firearms, explosives and Combustibles

The Governor may suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and combustibles. O.C.G.A. § 38-3-51(d)(8).

J. Schools and School Vehicles

There were no relevant emergency disaster and relief statutes or regulations located as of October 15, 2007.

K. Health Care Facilities

The Governor may compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. O.C.G.A. § 38-3-51(d)(4.1). The use of such health care facility may include transferring the management and supervision of the health care facility to the Department of Human Resources for a limited or unlimited period of time not extending beyond the termination of the public health emergency. (*Id.*). The Governor also is authorized to employ such measures and give such directions to the Department of Human Resources and local boards of health as may be reasonably necessary to secure compliance with the Georgia Emergency Management Act or with the findings or recommendations of the Department of Human Resources and local boards of health by reason of conditions arising from emergencies. O.C.G.A. §38-3-22(b)(6).

L. Specific enumerated responsibilities of the Georgia Division of Public Health And Department of Human Resources

Not specified at this time

2.43 The Role of GEMA

Before the Georgia Emergency Management Act, the Georgia Emergency Management Agency (GEMA) was known as the State Civil Defense Division of the Georgia Department of Defense, which was established in 1951. GEMA was moved from the Georgia Department of Defense to the Office of the Governor in 1991, and was placed under the Office of Homeland Security in 2003. The Office of Homeland Security reports directly to the Governor, and oversees GEMA, the Georgia Information Sharing and Analysis Center, and the Georgia Homeland Security Task Force.

GEMA is the lead agency with responsibility for emergency and disaster response activities. GEMA has six divisions through which it operates: Finance, Hazard Mitigation; Operations, Public Affairs, Public Assistance, and Terrorism Emergency Response and Preparedness. In the Georgia Emergency Operations Plan, GEMA has primary authority over communications, emergency management services, search and rescue, long term recovery and mitigation, and external affairs.⁸

⁸ See <http://www.gema.state.ga.us/>

SECTION 3.0 SOCIAL DISTANCING LAW PROJECT

SECTION 3.1 SOCIAL DISTANCING LAW PROJECT Georgia Department of Human Resources Division of Public Health

INTRODUCTION

The purpose of this report is to provide a legal assessment of Georgia's readiness to address pandemic influenza, particularly with respect to the state's ability to implement social distancing measures. Social distancing measures that are voluntary in nature will depend upon the cooperation of a well-informed citizenry. Public education campaigns and well timed and widely disseminated public information through media and other partners are the best means of increasing the likelihood that voluntary measures will be successful. Legally enforceable social distancing such as quarantine, isolation, closure of public places and imposition of curfew require a range of legal tools, statutory and regulatory, augmented by policy and procedure, which have been tested through exercises and real-life events. The laws that will enable or hinder the ability to distribute mass prophylaxis or treatment are touched upon briefly.

This report focuses on the legal tools currently available and attempts to inventory existing statutes and regulations with a view toward assessing their potential effectiveness. The limitations on these tools such as due process procedures and oversight by the General Assembly will be discussed along with gaps in the laws that indicate areas where more work must be done. The issues surrounding the underlying wisdom and efficacy of the various social distancing measures in the event of pandemic are not discussed here, but must be the subject of further study.

A. RESTRICTIONS ON THE MOVEMENT OF PERSONS

1. Declared State of Emergency

(a) In a declared state of emergency the Governor may "perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population." O.C.G.A. § 38-3-51(c)(4); "Utilize all available resources of the state government and of each political subdivision of the state as reasonably

necessary to cope with the emergency or disaster;” and, may “Direct or compel the evacuation of all or part of the population from any stricken or affected area within the state if he deems this action necessary for the

preservation of life or other disaster mitigation, response, or recovery;” “Prescribe routes, modes of transportation, and destinations in connection with evacuation;” and “Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.” O.C.G.A. § 38-3-51(d)(2), (5), (6) & (7).

(b) If the declaration is of a *public health emergency*, the Governor may “direct the Department of Human Resources to coordinate all matters pertaining to the response of the state to a public health emergency O.C.G.A. §38-3-51(i)(1). Accordingly, the Commissioner of DHR or her likely designee, the director of the Division of Public Health could issue an order for quarantine.

(c) The issuance of orders of quarantine is specifically contemplated in the range of authority because the statute discusses the due process rights available to the subject of a quarantine order which rights will be discussed more fully in a later section. O.C.G.A. § 38-3-51(i)(2). Furthermore, the authority of DHR and of the local county boards of health to issue isolation orders and of DHR to issue quarantine orders is established in O.C.G.A. § 31-12-4 with or without a declaration of emergency.

(1) According to the above citations the Governor or his designee who in particular may be DHR may issue orders controlling the movement of persons in a declared public health emergency. The authority to issue quarantine orders may be further delegated by the Governor or by DHR to anyone of the District Directors of Public Health.

(ii.) Georgia Law does not distinguish between group quarantine and area quarantine.

(iii.) Anyone violating a rule, regulation or order under O.C.G.A. §§ 38-3-1, *et seq.* is guilty of a misdemeanor. O.C.G.A §38-3-7.

(d.) The Governor has broad authority under O.C.G.A. § 38-3-51 to eliminate any obstacles to implementation of necessary population control measures in a public health emergency. The Governor further has broad power to delegate to any state agency or political subdivision his powers under the above statute.

During a public health emergency, public health activities will be coordinated as outlined in the Public Health Emergency Operations Plan which provides

guidance to the Division in its role as the lead in Emergency Support Function (ESF) 8, as designated by DHR.

(e) Gaps

(i) A limitation on the declaration of a public health emergency is that the Governor must call a special session of the General Assembly, which shall convene on the second day following the date of such declaration for the purpose of declaring or terminating the public health emergency. The General Assembly can terminate the state of public health emergency at any time. O.C.G.A. §38-3-51(a). These limitations are deemed requirements of the Constitution of Georgia Article V, Section II, Paragraph VII.

(ii) To date DHR has not promulgated rules for management of its response in a declared public health emergency. O.C.G.A. § 31-12-2.1 states that the department shall promulgate such rules with particular regard to coordination of its response in consultation with the Georgia Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture and the federal Centers for Disease Control and Prevention. O.C.G.A § 31-12-4 states that DHR shall promulgate rules and regulations relating to isolation and quarantine in a declared public emergency. The lack of regulation is a gap in the department's response plan, however, this deficiency is mitigated by the provision at O.G.C.A. § 31-12-2.1 which gives the department the power to adopt and implement emergency rules and regulations in the event of a public health emergency.

(iii) The department has not prepared a draft executive order for the declaration of a public health emergency as called for in O.C.G.A. § 31-12-2.1. In the absence of a draft declaration of public health emergency, the department will be required to draft an order as the emergency event is unfolding.

2. **Undeclared State of Emergency**

(a) In the absence of a declared state of emergency the department (DHR) has broad power to protect the health of the people of the state including the power to restrict movement of persons. O.C.G.A. §31-3-4 defines the powers of the Department, specifically, giving it power to, "... take steps necessary to prevent and suppress disease and conditions deleterious to health..." Additionally, the department may require measures to prevent the conveyance of infectious matter from infected persons to other persons as may be necessary and appropriate. O.C.G.A. § 31-12-3.

- (i) The department and the county boards of health may require segregation and isolation of persons with communicable diseases or conditions likely to endanger the health of others. O.C.G.A. § 31-12-4. Further, the department may isolate and treat persons afflicted with a communicable disease who are unable or unwilling to observe the department's rules and regulations for the suppression of such disease. O.C.G.A. § 31-2-1(4).
- (ii) The department may require quarantine or surveillance of carriers of disease and persons exposed to, or suspected of being infected with, infectious disease until they are found to be free of the infectious agent or disease in question. O.C.G.A. § 31-12-4. The department may impose complete or modified quarantine, isolation or surveillance of persons exposed to a communicable disease. O.C.G.A. § 31-2-1(4).

A board of health and wellness (Fulton County) has the authority to declare and enforce quarantine. O.C.G.A. § 31-3-2.1(c)(1).

(b) Under the authorities cited above, the department has broad authority to issue orders for quarantine and isolation as does the lone board of health and wellness of Fulton County. The county boards of health may isolate infected persons for treatment and protection of the population from disease transmission by the infected person.

(c) There is no specific provision in the law for a distinction between group and area quarantine, however, in a section describing the duties and functions of the department, O.C.G.A § 31-2-1(4) states that the department may establish "complete or modified quarantine."

(d) If a person violates an order of the department it can seek injunctive relief in any court of competent jurisdiction and the violation of that order would be punishable as for contempt of court. O.C.G.A. § 31-5-9.

(e) Gaps: The department's lack of regulations dealing with social distancing will present difficulties both in implementation and enforcement. Without regulations, lines of authority may be confused and if the orders are challenged, may pose a hurdle in having the order upheld by an administrative law judge or superior court judge. The department can promulgate emergency rules and regulations under the state Administrative Procedure Act. O.C.G.A. §§ 50-13-1, *et seq.* The difference between an emergency rule adopted under the provisions of the APA in the absence of a declared public health emergency is that if no public health emergency has been declared the rules will stay in effect for not longer than 120 days whereas if the emergency rule is adopted pursuant to a declaration of public health emergency it will remain

in effect for the duration of the emergency declaration plus 120 days thereafter. (A declaration of emergency may not last longer than 30 days unless renewed by the Governor.)

3. **Due Process Considerations**

A. **Declared Public Health Emergency.** The recipient of an order for isolation or quarantine is allowed an opportunity to challenge the order however the order is not stayed during the pendency of the challenge. The individual or class of individuals affected must be given notice of the right to challenge the order before any available judge of the state courts, superior courts, the Court of Appeals or the Supreme Court as well as the right of access to counsel and to subpoena and cross examine witnesses. The department would ordinarily be represented by a lawyer from the department of Law of the Office of the Attorney General. The judge may appoint counsel to represent any interested party. That being said, according to the circumstances of the emergency and upon proper attestation thereof, the judge may combine cases and /or proceed *ex parte*. One of those circumstances affecting how the proceeding is held could be the need to avoid gatherings of people to prevent spread of the infection. At hearing the state carries the burden of proof to demonstrate by a preponderance of the evidence that there is a substantial risk of exposing others to imminent danger. Either party may appeal the order of the judge within 24 hours. All filing fees for the initial challenge and the appeal are to be waived and the costs borne by the state. O.C.G.A. § 38-3-51(i)(2)

B. **Absence of Declaration of Emergency.** An order for isolation or quarantine given when there has been no declaration of public health emergency would be challengeable under the normal procedures for contested cases under the Georgia Administrative Procedure Act. O.C.G.A. § 31-5-2; O.C.G.A. §§ 50-13-12 through 50-13-16; O.C.G.A. § 50-13-41 and the Rules and Regulations of the State of Georgia, Office of State Administrative Hearings, Administrative Rules of Procedure, Chapter 616-1-2. The department is required to give the petitioner notice of his right to request a hearing before an Administrative Law Judge of the Office of State Administrative Hearings, his right to counsel, and to subpoena and cross examine witnesses. Ordinarily, the time from a request for hearing and the time an initial decision is executed could be as much as sixty days, however, the Administrative Rules of Procedure cited above provide at Rule 31 for Emergency and Expedited Proceedings upon motion of either party when the Administrative Law Judge determines that the circumstances require, in the interest of public health and safety, that an expedited hearing be held. Under circumstances warranting isolation or quarantine the department's counsel would make such a motion as well as a motion for an oral decision from the bench. Counsel would also challenge any request for a stay of the quarantine or isolation order in the interest of public safety. Either party could appeal the initial decision of the ALJ to the department. The petitioner could request judicial review by the superior court in the county where the petitioner resides or to the Superior Court of Fulton County. The department's counsel would again challenge any request to stay the

original order in the interest of public health and safety. Though the superior court's decision is appealable the standard of review for a petition for judicial review is that of any evidence.

4. Curfew

The only curfew directives that have been codified into Georgia law or County ordinances are those targeting juvenile truancy. However, the Association of County Commissioners (ACCG) developed a model ordinance authorizing the imposition of curfews during times of emergency or disaster. (*See text of ordinance below*)

WHEREAS, the health, safety and welfare of the citizens and property of _____ County may be jeopardized during an emergency, disaster or imminent threat thereof, by the presence of looters, vandals, thieves and others who would take advantage of the confusion and devastation that accompanies such an event

WHEREAS, the local governing authority of _____ County is authorized pursuant to O.C.G.A. §§ 38-3-27(b)(2) and 38-3-28 to take actions necessary to provide for the health and safety of persons and property during periods of emergency or disaster, provided that such actions are not inconsistent with any orders, rules, or regulations promulgated by the Governor or his delegatee;

WHEREAS, the _____ County Board of Commissioners believes that it is desirable to have legislation in place authorizing the Board to enact a curfew when it is determined necessary to maintain order and to protect either the citizens or their property during an emergency or disaster in certain areas of the county.

NOW, THEREFORE, BE IT RESOLVED that the governing authority of _____ County hereby enacts the following ordinance relative to the imposition of curfew during periods of emergency or disaster:

“Section 1. Institution of Curfew.

(1) Upon the declaration of a state of emergency by the Governor, or upon the determination by the county governing authority, or its designee, of the existence of an emergency or disaster, the county governing authority, its designee or the emergency interim successor may adopt a resolution instituting a curfew when it is determined necessary to protect and safeguard the people and property of _____ County.

(2) All of the territory of the unincorporated county shall be subject to the terms of the curfew, unless otherwise specified in the resolution.

(3) The resolution instituting the curfew shall include the dates and hours that the

curfew shall be in effect.

Section 2. Definitions.

(1) Curfew. A 'curfew' is a regulation requiring the withdrawal from any person not otherwise exempt from this ordinance from appearing in certain public areas during specified hours.

(2) Exempt individuals. Unless otherwise specified in the resolution implementing the curfew, 'exempt individuals' include those individuals engaged in the provision of designated, essential services, such as fire, law enforcement, emergency medical services and hospital services, military services, utility emergency repairs. The resolution may, in the discretion of the governing authority, also exempt regular employees of local industries traveling to and from their jobs with appropriate identification, news media employees, building and repair contractors, properly registered according to _____ County Ordinance No. _____ ("Ordinance to Require Registration and Licensing of Building and Repair Services During a State of Emergency"), performing activities related to construction, repair, renovation or improvement of buildings and other structures damaged during the disaster or emergency.

(3) State of Emergency. As defined by O.C.G.A. § 38-3-3(7), a condition declared by the Governor when, in his judgment, the threat or actual occurrence of a disaster, emergency, or energy emergency is of sufficient severity and magnitude as to warrant extraordinary efforts in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby.

Section 3. Prohibition.

It shall be prohibited for any person, other than exempt individuals, to appear in public in the territory subject to the curfew, including but not limited to, streets, highways, alleys, sidewalks, vacant lots, parks, public buildings or any other public places in all or a delineated part of unincorporated _____ County during the stated hours of the curfew.

Section 4. Penalties.

Any individual violating this ordinance, upon conviction, shall be punishable by a fine not to exceed \$1000 per violation or imprisonment not to exceed sixty (60) days, or both.

Section 5. Severability.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is, for any reason, held to be unconstitutional, inoperative, or void by any court of competent jurisdiction, such holding shall not affect the remainder of this ordinance.

Section 6. Effective Date.

This ordinance shall become effective upon adoption by the local governing authority of _____ County."

APPROVED AND ADOPTED by the Board of Commissioners of
_____ County, this ____ day of _____, 20__.

Chairman

ATTEST:

County Clerk

5. Interstate/Intrastate Assistance Agreements

Georgia has enacted law, the Emergency Management Assistance Compact, O.C.G.A. 38-3-81, which allows Georgia to operate as a part of the Interstate Mutual Aid Compact. Under this provision, Georgia has the authority to assist other states in an emergency and seek assistance from other states. This is of particular importance because the Interstate Mutual Aid Compact gives the state receiving assistance a right to seek compensation for the services/assistance that it provides to another state (*Look at specific language*). It could be problematic trying to receive assistance from a state with adequate assurances that they will be compensated for resources it provides.

Specific authority for Georgia to enter into Interstate Assistance Agreements is granted in O.C.G.A. 38-3-22, which directs that, “[the] Governor has authority to enter into reciprocal aid agreements or compacts with other states.” Furthermore, this provision gives the Governor the authority, “...to sponsor and develop mutual aid plans and agreements between political subdivisions of the state.

6. Law Enforcement of Restrictions on Movement of Persons

a. Declared State of Emergency-- In a declared state of emergency the Governor is authorized and empowered to “take such action and give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with Articles 1 through 3 of this chapter (the Emergency Management Act) and with orders rules and regulations made pursuant thereto.” O.G.C.A.§ 38-3-22(b)(5). The Governor may also “Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency or disaster.” O.G.C.A. §38-3-51 (c)(2) and “ [E]mploy such measures and give such directions to the Department of Human Resources and local county boards of health as may be reasonably necessary for the purpose of securing compliance with Articles 1 through 3 of this chapter and with the order, rules and regulations made pursuant thereto.” O.C.G.A. 38-3-22 (b) (6) 38-3-22(b)(6).

According to O.C.G.A. §38-3-4, “The law enforcement authorities of the state and of the political subdivision shall enforce the orders, rules, and regulations issued pursuant to Articles 1 through 3 of this chapter.” Though local law enforcement could be expected to enforce social distancing orders in their particular jurisdictions, a high rate of absenteeism due to illness may cause the Governor to choose to allocate law enforcement so as to cross jurisdictions and normal job duties.

While some law enforcement may be assigned normal peace-keeping duties, any POST certified officers, to include correction officers and officers of the Department of Natural Resources, may be tasked to perform duties such as enforcement of social distancing. In a state of emergency such job assignments would be assigned through the State Operations Center.

(b) Absence of Declaration - The law addressing the department’s and the local boards of health’s authority to implement isolation and /or quarantine does not specifically address the role of law enforcement in ensuring compliance with the orders. According to O.C.G.A. §36-69-3 “ in the event of a local emergency, the local law enforcement agency may render assistance extraterritorially in the prevention and detection in the violation of any law...”

There is precedence in other specific public health activities for the role of law enforcement. For example, in the area of control of sexually transmitted diseases generally the law states that “law enforcement authorities of the jurisdiction wherein any such person so infected or suspected of being infected is located shall offer such assistance, including restraint and arrest as shall be necessary to assure examination and treatment . . .” O.C.G.A. § 31-17-3.

In the area of Tuberculosis control the law states that the court, presumably upon a petition by the County Board of Health, can direct the sheriff or sheriff’s deputies to take persons infected with TB into custody where the person presents a substantial risk of exposing other persons to an imminent danger of infection. As a general precept the following statute is helpful in recognizing the enforcement of quarantine as a governmental duty though it is in direct contradiction of the statutes empowering the state and local boards of health to pass regulations related to public health; O.G.C.A. § 36-5-22.1 states that the governing authority of each county has original and exclusive jurisdiction over the making of rules and regulations for “the county police and patrol, for the promotion of health , and for quarantine as are authorized by law. . .”

(c) Gaps - The department would benefit by the passage of legislation giving law enforcement specific authority to enforce public health orders for communicable diseases similar to that in place for STDs and Tuberculosis. Public health also needs to explore the options available for law enforcement in the manner of enforcement of public health orders. An individual who is ordered into isolation because he is ill would be taken to a treatment facility, however, the noncompliant

subject of a quarantine order is another question. If police officers arrest and incarcerate people violating quarantine or round up and detain people who refuse an order not to congregate they will likely undo the effects the social distancing measures were intended to bring about.

B. CLOSURE OF PUBLIC PLACES

1. Declared State of Emergency - The Governor is empowered to declare a public health emergency under circumstances where there is the presence or imminent threat of an infectious disease posing “a significant risk of substantial future harm to a large number of people in the affected population.” If the declaration is of a public health emergency, the Governor may “direct the Department of Human Resources to coordinate all matters pertaining to the response of the state to a public health emergency including mitigation. O.C.G.A. § 38-3-51(i)(1).

An important component of mitigation would be limiting the exposure of well persons to those carrying the disease. Inasmuch as people may be infectious before they are symptomatic, closing places where large numbers of people gather in close proximity to one another may be the single most effective mitigation measure to be undertaken by the department. Accordingly, the Commissioner of DHR or her designee, the director of the Division of Public Health would issue an order for closure of public places and cancellation of public gatherings if the closures and cancellations are needed to protect the public health from spread of pandemic influenza.

2. Absence of Declaration - The department is required, even in the absence of a declaration of public health emergency, to ascertain the existence of any illness or health condition that may be caused by epidemic, pandemic disease or novel and highly infectious agents that *pose a substantial risk* of public health emergency and to provide for proper control measures. To that end, the department shall among other measures close any facility that may endanger the public health. O.C.G.A. §31-12-2.1 (a). As stated above, the first control measure likely to be undertaken in the advent of pandemic influenza would be closure of public places and cancellation of mass gatherings to prevent the rapid spread of the disease.

3. Gaps- The department does not, at this time have regulations pertaining to the closure of public places. Though the Administrative Procedure Act provides for the emergency promulgation of regulations as does the Emergency Management Act, an existing set regulations permitting the closure of public places as well as quarantine, isolation and other social distancing measures would ensure measures that need to be taken quickly would not be delayed.

4. Due Process

(a) Declared State of Emergency- Though the Emergency Management Act does not specifically mention closure of public places, such an order

should be treated, for due process purposes, the same as an order for isolation, quarantine or mandatory vaccination. The recipient of an order to close a business, or agency or cancel a public gathering such as a parade, fair or demonstration would be allowed an opportunity to challenge the order, however as with quarantine, the order would not be stayed during the pendency of the challenge.

The individual or class of individuals affected must be given notice of the right to challenge the order before any available judge of the state courts, superior courts, the Court of Appeals or the Supreme Court as well as the right to access to counsel and to subpoena and cross examine witnesses. The judge may appoint counsel to represent any interested parties. That being said, according to the circumstances of the emergency and upon proper attestation thereof, the judge may combine cases and /or proceed *ex parte*.

One of those circumstances affecting how the proceeding is held could be the need to avoid gatherings of people to prevent spread of the infection. At the hearing, the state carries the burden of proof to demonstrate by a preponderance of the evidence that there is a substantial risk of exposing others to imminent danger. Either party may appeal the order of the judge within 24 hours. All filing fees for the initial challenge and the appeal are to be waived and the costs borne by the state. O.C.G.A. § 38-3-51(i)(2).

The closure of a business such as a shopping center, or the cancellation of a religious or political gathering is likely to be met with protests of an unjust taking of property on the one hand and a curtailment of religious expression or free speech on the other. The right of the state to exercise its police power where there is compelling necessity to protect the health and safety of the public is well established in common law provided it is not exercised in an arbitrary and capricious manner and procedural due process protections are provided. Ingram v. State, 193 Ga. 565, 195 S.E.2d 493 (1942) De Berry v. City of La Grange, 62 Ga. App. 74,8 S.E.2d 146, (1940); Horne v. City of Cordele et al, 140 Ga. App. 127, S.E. 2d 333, (1976).

(b) Absence of Declaration - The same due process considerations apply to an order for closure of public places or cancellation of a public gathering in the absence of a declared state of emergency, however, there is a difference in the procedures to be followed. An order to close a business or cancel a public gathering given when there has been no declaration of public health emergency would be challengeable under the normal procedures for contested cases which include provisions of the Georgia Administrative Procedure Act. O.C.G.A. § 31-5-2; O.C.G.A. §§ 50-13-12 through 50-13-16; O.G.G.A. § 50-13-41 and the Rules and Regulations of the State of Georgia, Office of State Administrative

Hearings, Administrative Rules of Procedure, Chapter 616-1-2. The department is required to give the petitioner notice of his right to request a hearing before an Administrative Law Judge of the Office of State Administrative Hearings, his right to counsel, and to subpoena and cross examine witnesses.

Ordinarily, the time from a request for hearing and the time an initial decision is executed could be as much as sixty days, however, the Administrative Rules of Procedure cited above provide at Rule 31 for Emergency and Expedited Proceedings upon motion of either party when the Administrative Law Judge determines that the circumstances require in the interest of public health and safety that an expedited hearing be held. Under circumstances warranting a closure of a business or public gathering, the department's counsel would make such a motion as well as a motion for an oral decision from the bench. Counsel would also challenge any request for a stay of the order in the interest of public safety.

Either party could appeal the initial decision of the ALJ to the department. The petitioner could request judicial review by the superior court in the county where the petitioner resides or to the Superior Court of Fulton County. The department's counsel would again challenge any request to stay the original order in the interest of public health and safety. Though the superior court's decision is appealable the standard of review for a petition for judicial review is that of any evidence.

C. MASS PROPHYLAXIS READINESS

1. Prescription Drugs- Georgia has no legal mechanism in law or regulation for mass distribution of prescription medications by use of "blanket prescriptions." Such blanket prescriptions would be violative of both the Georgia Criminal Code and pharmacy law. O.C.G.A. § 16-13-78.1 states; (a) No person shall prescribe or order the dispensing of a dangerous drug except a registered practitioner who is licensed, acting in the usual course of the practitioner's business and prescribing the drug for a medical purpose. A violation of this law is a misdemeanor. Further, the dispensing of a prescribed drug requires a label on the container that includes the name of the patient, prescriber, name and address of the pharmacy dispensing the drug and the date of the prescription. O.C.G.A. § 16-13-73. Violation of this law is a misdemeanor. Also consider pharmacy law at O.C.G.A. § 26-4-80(b) states "Prescription drugs shall be dispensed only pursuant to a prescription drug order."

2. Declared Public Health Emergency - In a declared state of emergency the Governor can suspend the regulatory statutes and regulations that would in any way hinder or delay necessary action in coping with the emergency or disaster. O.C.G.A. §38-3-51(d)(1). The Governor is further

authorized to utilize all available resources of the state government and each political subdivision of the state as reasonably necessary to cope with the emergency or disaster. O.C.G.A. §38-3-51(d)(2).

Under a declared state of public health emergency the Governor could authorize a suspension of the statutory and regulatory requirements for prescriptions. He could directly authorize or the department could promulgate emergency regulation for the for mass prescribing and dispensing of vaccines, antivirals and other medications by others such as nurses, dentists, veterinarians and Emergency Medical Technicians (EMT).

3. Mandatory Vaccination-The department may require vaccination against disease. It may take into consideration the opinion of an individual's personal physician as to whether such vaccine is advisable or appropriate for the physician's patient. O.C.G.A. § 31-12-3 (a). In the absence of a threat of epidemic a person cannot be compelled to submit to vaccination if he or she submits in writing that the vaccination is contrary to his or her religious beliefs. O.C.G.A. §31-12-3(b).

4. Due Process Requirements

(a) Declared Public Health Emergency.

In a declared emergency an individual or class may challenge a vaccination order before any available judge of the state courts, superior courts, the Court of Appeals or the Supreme Court. The state shall have the burden of proof which shall be met by clear and convincing evidence. The petitioner shall have access to counsel, and the right to subpoena witnesses and cross examine witnesses, however the judge may take into consideration the circumstances of the emergency in determining how to proceed with the hearing. O.C.G.A. § 38-3-51 (i)(2)(A),(B)&(C).

In the instance where social distancing in effect the judge could, proceed *ex parte* or may conduct the hearing by telephone. He or she could allow some relaxation of the rules of evidence presumably by allowing affidavits rather than live testimony in some instances. The judge's order would apply on notice to the department or its agents administering the vaccine. Any party may appeal the order within 24 hours and the law requires the appeal to be heard expeditiously. All filing fees are to be waived and costs borne by the state. O.C.G.A. § 38-3-51 (i)(2)(C),(D)&(E).

(b). Absence of Declared Emergency. An order for vaccination where there has been no declaration of public health emergency would be challengeable under the normal procedures for contested

cases and proceed under the state Administrative Procedure Act. O.C.G.A. § 31-5-2; O.C.G.A. §§ 50-13-12 through 50-13-16; O.C.G.A. § 50-13-41 and the Rules and Regulations of the State of Georgia, Office of State Administrative Hearings, Administrative Rules of Procedure, Chapter 616-1-2. The department is required to give the petitioner notice of his right to request a hearing before an Administrative Law Judge of the Office of State Administrative Hearings, his right to counsel, and to subpoena and cross examine witnesses. As stated above, the time from a request for hearing and the time an initial decision is executed could be as much as sixty days, however, the Administrative Rules of Procedure cited above provide for Emergency and Expedited Proceedings upon motion of either party when the Administrative Law Judge determines that the circumstances require in the interest of public health and safety that an expedited hearing be held. Under circumstances warranting mandatory vaccination the department's counsel would make such a motion as well as a motion for an oral decision from the bench. Either party could appeal the initial decision of the ALJ to the department. The petitioner could request judicial review by the superior court in the county where the petitioner resides or to the Superior Court of Fulton County. Though the superior court's decision is appealable the standard of review for a petition for judicial review is that of any evidence.

Conclusion

Participating in this Social Distancing Project has been invaluable in that we were able to take an in depth look at our authorities from various angles. Consequently, we have identified areas of strengths and gaps that will need our attention. With these findings, we are poised to strengthen the authorities required to adequately respond to a pandemic.

Currently, the authorities that exist in Georgia to implement social distancing measures are broad, which is a blessing as well as a curse. We all are aware that a calamity the scope of the anticipated pandemic influenza has not been experienced in the world since the advent of widespread intercontinental travel and 24 hour news. Given that, the breadth of our authority helps ensure that we will be able to respond to a variety of circumstances, some of which will undoubtedly be unforeseen. That same breadth can be a curse because though the law may tell us *that* we can do something, it offers us little guidance on *how* it can be achieved. Looking at all the laws together at one time through the narrow lens of social distancing has allowed us to see glaring gaps. For example, the lack of regulations mentioned in the report, and confusing directives and inconsistencies (e.g. some statutes allow the counties to implement quarantine, but not the county boards of health. Others permit only the state to implement quarantine.)

The gaps, inconsistencies and practical issues that arose out of the Legal Consultation Meeting that was a part of this project have given the Department and the Division of Public Health ample material from which to create a blueprint for continuing influenza pandemic planning in the coming months. Some statutory revision may be necessary; certainly regulations must be promulgated and passed. Community relationships must be pursued and enhanced so all parties can better cooperate when the pandemic reaches us. As steps are taken to improve readiness we must continue to conduct exercises to test and improve the projected effectiveness of our preparation.

SECTION 3.0 SOCIAL DISTANCING LAW PROJECT

SECTION 3.2 TABLE OF AUTHORITIES

GEORGIA DEPARTMENT OF HUMAN RESOURCES
DIVISION OF PUBLIC HEALTH
Legal Services Office

An overview of
Statutory Authorities Relevant to
Declared and Undeclared Emergencies

Presented: June 18, 2007
ASTHO Social Distancing Law Project

OFFICIAL CODE OF GEORGIA

**STATUTORY AUTHORITY RELEVANT
TO DECLARED EMERGENCIES**

§ 38-3-22. Governor's emergency management and powers and duties

- (a) The Governor shall have general direction and control of the Georgia Emergency Management Agency and shall be responsible for the carrying out of the provisions of Article 1, this article, and Article 3 of this chapter and, in the event of disaster or emergency beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

- (b) In performing his duties under Articles 1 through 3 of this chapter, the Governor is further authorized and empowered:
 - (1) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of Articles 1 through 3 of this chapter with due consideration to the plans of the federal government;

 - (2) To prepare a comprehensive plan and program for emergency management in this state, such plan and program to be integrated into and coordinated with the emergency management and preparedness plans of the federal government and of other states to the fullest possible extent; and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of this state, such plans to be integrated into and coordinated with the emergency management plan and program of this state to the fullest possible extent;

 - (3) In accordance with the plan and program for emergency management in this state, to ascertain the requirements of the state or the political subdivisions thereof for food, clothing, and other necessities of life, in the event of a manmade or natural emergency or disaster, or enemy attack; to plan for and procure supplies, medicines, materials, and equipment, and to use and employ from time to time any of the property, services, and resources within the state for the purposes set forth in Articles 1 through 3 of this chapter; to make surveys of the industries, resources, and facilities within the state as are necessary to carry out the purposes of Articles 1 through 3 of this chapter; to institute training programs and public information programs, to take all other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual emergency or disaster, and to ensure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need;

(4) To coordinate with the President, the heads of the armed forces, the agency or officers responsible for emergency management and defense of the United States, and the officers and agencies of other states, matters pertaining to emergency management in the state and nation and the incidents thereof; and in connection therewith, to take any measures which he may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies for any action looking to emergency management, including the direction or control of emergency management exercises he deems necessary and appropriate for operational capability;

(5) To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with Articles 1 through 3 of this chapter and with the orders, rules, and regulations made pursuant thereto;

(6) To employ such measures and give such directions to the Department of Human Resources and local boards of health as may be reasonably necessary for the purpose of securing compliance with Articles 1 through 3 of this chapter or with the findings or recommendations of the Department of Human Resources and local boards of health by reason of conditions arising from emergencies or disasters, manmade or natural, or the threat of enemy attack or otherwise;

(7) To utilize the services and facilities of existing offices and agencies of the state and of the political subdivisions thereof; and all such offices and agencies shall cooperate with and extend their services and facilities to the Governor as he may request;

(8) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of Articles 1 through 3 of this chapter including, with due consideration to the recommendations of the local authorities, full-time state and regional area or field coordinators;

(9) To delegate any authority vested in him under Articles 1 through 3 of this chapter;

(10) On behalf of this state to enter into reciprocal aid agreements or compacts with other states and the federal government, either on a state-wide basis or local political subdivision basis or with a neighboring state. Such mutual aid arrangements shall include but not be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health, medical, and related services; fire-fighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for

equipment, supplies, personnel, and similar items for mobile support units; and fire-fighting, police, and health units on such terms and conditions as are deemed necessary; and

(11) To sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to in paragraph (10) of this subsection.

(c) In addition to the emergency and disaster prevention measures included in the state and local emergency management plans, the Governor shall be empowered to make such studies, surveys, or analyses of potential emergency or disaster areas of the state as he deems necessary, both public and private, to prevent or reduce the harmful consequences of emergencies or disasters resulting from manmade or natural causes or from enemy attack; and to develop or cause to be developed measures to reduce the harmful consequences indicated in the studies, surveys, or analyses.

§ 38-3-27. Local organizations for emergency management; creation; structure; powers; directors; appointment, qualifications, and compensation; state to provide financial assistance; entitlement for funding

(a)(1) The governing body of each county of this state may establish a local organization for emergency management in accordance with the state emergency management plan and program. If a county fails to establish an organization for emergency management in accordance with the state emergency management plan and program, any municipality in such county may establish its own organization for emergency management. In cases where a county has an organization for emergency management, such organization shall include participation by each city within the county unless the governing authority of any particular city elects to implement its own organization for emergency management. Any two or more of the above-mentioned political subdivisions may, with the approval of the director, contract with each other so as to form one emergency management organization for the entire area included in the bounds of the contracting political subdivisions. The executive officer or governing body of the political subdivision is authorized to nominate a local director to the director of emergency management who shall have the authority to make the appointment. The local director shall have direct responsibility for the organization, administration, and operation of the local organization for emergency management, subject to the direction and control of the executive officer or governing body and shall serve at the pleasure of such executive officer or governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to Article 1, this article, and Article 3 of this chapter.

(2) A local director appointed pursuant to the provisions of paragraph (1) of this subsection who is paid a salary for full-time service as a director by the political subdivision or political subdivisions shall have the following minimum qualifications:

(A) The director shall be at least 21 years of age;

(B) The director shall not have been convicted of a felony. The executive officer or governing body of a political subdivision which nominates a local director shall furnish the director of emergency management two sets of fingerprints of the nominee. The director of emergency management shall forward fingerprints received concerning each nominee to the Georgia Crime Information Center of the Georgia Bureau of Investigation for the purpose of criminal identification through the fingerprint system of identification established by the Georgia Bureau of Investigation and the fingerprint system of identification established by the Federal Bureau of Investigation. The Georgia Crime Information Center shall report the findings of its records search and the records search of the Federal Bureau of Investigation to the director of emergency management;

(C) The director shall have completed a high school education or its equivalent and shall have successfully completed all initial courses required by the director of emergency management within 180 days following the date of nomination to office or within an extended period as determined by the director of emergency management and shall have successfully completed subsequent courses required by the director of emergency management within an appropriate period as determined by the director of emergency management;

(D) The director shall be capable of writing plans for responding to and recovering from disasters in his jurisdiction and shall be routinely available to respond to emergency scenes, command posts, or operation centers; to coordinate emergency response of public and private agencies and organizations; to attend training; and to attend meetings convened by the appointing authority or the director of emergency management; and

(E) The director shall not be self-employed or have any other occupation in the private sector which conflicts with his duties as a local director.

(3)(A) If a local director appointed pursuant to the provisions of paragraph (1) of this subsection is a part-time director, such part-time director shall meet the minimum qualifications in subparagraphs (A) through (D) of paragraph (2) of this subsection. If such local director is employed under a 40 to 90 percent (time required on job) work contract, such local director shall be required to devote at least 80 hours per month on emergency management matters but not more than 30 hours in any one week during normal business hours of other county offices. If such local director is employed under a 25 to 39 percent (time required on job) work contract, such local director shall be required to devote at least 40 hours per month on emergency management matters but not more than 15 hours in any one week during normal business hours of other county offices.

(B) If the part-time paid director is also a part-time paid employee of the federal or state government, he must have written authorization from the appropriate appointing authority to hold the position of director and to comply with the provisions of

subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(C) If the part-time paid director is also a part-time paid employee of county or municipal government in another capacity, that government must enact an order or ordinance specifying that such director will be permitted to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection. The order or ordinance shall also specify that the individual, when acting as director, shall relinquish authorities and responsibilities associated with his other governmental employment and shall name a person to assume those authorities and responsibilities until such time as the director shall cease to function as director. In no case shall the county or municipal government seek or receive any reimbursement for the part-time paid director's salary if such director is employed and compensated by the county or municipality in another capacity.

(D) If the part-time paid director is also a part-time paid employee in the private sector, he shall have a letter from his employer stating that he shall, without penalty, be permitted to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(E) If the part-time paid director is self-employed, he must certify, by letter, that his schedule shall permit him to comply with the provisions of subparagraph (A) of this paragraph and subparagraph (D) of paragraph (2) of this subsection.

(F) Except as provided in this subparagraph, any director or deputy director of a local emergency management organization appointed after July 1, 1999, shall be a certified emergency manager under the Georgia Emergency Management Agency's Certified Emergency Manager Program. The curriculum of the Certified Emergency Manager Program and requirements for certification shall be determined by the director of emergency management and shall include, but not be limited to, professional development series training, independent study courses, emergency preparedness courses, and field-delivered courses. Certification may be obtained by an appointed director or deputy director within six months of his or her appointment. Certification shall expire biennially. As a condition of certification renewal, such emergency management personnel shall be required to satisfactorily complete continuing education requirements provided for in subparagraph (G) of this paragraph.

(G) Emergency management personnel certified under the Certified Emergency Manager Program shall complete annually a minimum of 24 hours of continuing education to maintain certification. The continuing education shall include programs and courses sponsored or approved by the director of emergency management. Personnel who lose their certification because of their failure to meet continuing education requirements will be eligible for recertification under provisions included in the Certified Emergency Manager Program.

(4) If a political subdivision has a volunteer director, the political subdivision shall furnish assistance to enable the volunteer director to carry out his duties outlined in this article and Article 3 of this chapter.

(5) The political subdivision shall designate an office in a building owned or leased by the political subdivision as the office of emergency management. Such office of emergency management shall have appropriate equipment and supplies, including but not limited to telephone and communication equipment, access to the 9-1-1 system if such system is operational in the political subdivision, desks, typewriters, file cabinets, and necessary office supplies. No such equipment or supplies shall be used for personal business. The local director shall post on the front door of the office the schedule of hours of the work week in which he will be attending to emergency management matters. The citizens of a political subdivision shall have accessibility to the office of emergency management and the local director or his designee shall be available or on call at all times beyond working hours.

(6) A local director whose salary is reimbursed in part or in full by the Georgia Emergency Management Agency shall also meet all requirements which may be imposed by the federal emergency management agency or its successor.

(7) A local director who no longer meets the qualifications or complies with the requirements of this subsection may be removed by the director of emergency management. In any case where a local director is removed pursuant to this paragraph, the executive officer or governing body of the political subdivision shall nominate another local director.

(b) Each political subdivision shall have the power and authority:

(1) To appropriate and expend funds, execute contracts, and to obtain and distribute equipment, materials, and supplies for emergency management purposes;

(2) To provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency or disaster resulting from manmade or natural causes or enemy attack and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies;

(3) To appoint, employ, remove, or provide, with or without compensation, chiefs of services, warning personnel, rescue teams, auxiliary fire and police personnel, and other emergency management workers;

(4) To establish a primary and one or more secondary control centers to serve as command posts during an emergency or disaster;

(5) Subject to the order of the Governor or the chief executive of the political subdivision, to assign and make available for duty the employees, property, or equipment of the subdivision relating to fire-fighting, engineering, rescue, health, medical and related services, and to police, transportation, construction, and similar items or services for emergency management purposes, within or outside of the physical limits of the subdivision;

(6) In addition to the heretofore stated powers and authorities, to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims; and to enter into whatever arrangements, including purchase, of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

(c) There is created a state fund to provide assistance to local organizations for emergency management which are authorized by subsections (a) and (b) of this Code section. The fund shall be used for the purpose of making grants to local emergency management organizations to enable them to purchase or otherwise obtain equipment which is needed for disaster preparedness. The fund shall be administered by the director of emergency management who, by rules and regulations, shall establish uniform criteria governing application for and the use of funds granted to local organizations for emergency management pursuant to this subsection. The rules and regulations shall include, but shall not be limited to, provisions:

(1) Requiring that, as a condition precedent to receiving a state grant pursuant to this subsection, an amount equal to the state grant shall be raised from local funds for the purchase of disaster preparedness equipment;

(2) Defining disaster preparedness equipment which shall qualify for purchase by the use of matching funds made available pursuant to this subsection;

(3) Establishing procedures and requirements governing the purchase of disaster preparedness equipment when matching funds made available pursuant to this subsection are used for the purchase;

(4) Establishing priorities governing grants made pursuant to this subsection which shall be based on the most effective and efficient use of disaster preparedness equipment purchased with matching funds made available pursuant to this subsection;

(5) Establishing forms, procedures, and requirements governing applications for grants pursuant to this subsection; and

(6) Prohibiting any single local emergency management organization from receiving more than 12 1/2 percent of the total funds annually appropriated to carry out this subsection.

(d) The funds necessary to carry out subsection (c) of this Code section shall come from funds specifically appropriated for such purpose by the General Assembly.

(e)(1) To the extent funds are appropriated for such purpose by the General Assembly, the director of emergency management is authorized and directed to provide funds to counties or municipalities which operate a local emergency management organization as required by this Code section. No county or municipality shall be entitled to receive funds unless the local emergency management organization has met all of the state and federal requirements to be an emergency management organization qualified to receive federal funds, including:

(A) Legal establishment by local ordinance or resolution;

(B) A legally appointed local director who has been endorsed and approved by the state director of emergency management and appointed by the Governor;

(C) An approved emergency and disaster plan with all applicable annexes; and

(D) An approved fiscal year program paper and other necessary compliance documents.

(2) The amount provided to each county or municipality shall be equal to the amount of any shortfall in federal funding which results in federal funds which less than match (on a 50 percent--50 percent basis) the amount budgeted by the county or municipality for the purpose of operating and maintaining the local emergency management organization.

(3) In the event sufficient state funds other than those from federal sources are not appropriated for a fiscal year to fund the full amount provided for in paragraph (2) of this subsection, then the amount which would otherwise be payable to each county and municipality shall be reduced pro rata on the basis of the funds actually appropriated.

(4) The director of emergency management is authorized and directed to adopt and promulgate appropriate rules and regulations to carry out this subsection.

(5) Funds to carry out this subsection shall come from funds appropriated to the Office of Planning and Budget specifically for the purposes of carrying out this subsection.

(f)(1) After December 31, 1993, any county which fails at any time to have established a local organization for emergency management in accordance with the state emergency management plan and program shall not be entitled to any state funding for disaster relief assistance.

(2) After December 31, 1993, if a county has an organization for emergency management but a municipality within the county is not a part of the county's organization or plan and fails to have in place a local organization for emergency management in accordance with

the state emergency management plan and program, such municipality shall not be entitled to any state funding for disaster relief assistance.

§ 38-3-29. Local mutual aid arrangements; out-of-state arrangements; conformity with state plan

(a) The director of each local organization for emergency management, in collaboration with other public and private agencies within this state, may develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of emergency or disaster too great to be dealt with unassisted. The arrangements shall be consistent with the state emergency management plan and program, and in time of emergency it shall be the duty of each local organization for emergency management to render assistance in accordance with the mutual aid arrangements.

(b) The director of each local organization for emergency management, subject to the approval of the Governor, may enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency management aid and assistance in case of emergency or disaster too great to be dealt with unassisted.

§ 38-3-50. Emergency interim successors to various officials; necessity of declared emergency

(a) As used in this Code section, the term:

(1) "Disaster" means any happening that causes great harm or damage.

(2) "Emergency" means a sudden generally unexpected occurrence or set of circumstances demanding immediate action.

(3) "Emergency interim successor" means a person designated pursuant to this Code section, in the event an officer is unavailable to exercise the powers and discharge the duties of an office, until a successor is appointed or elected and qualified as may be prescribed by the Constitution, statutes, laws, charters, and ordinances of this state and its political subdivisions, or until the lawful incumbent or his successor is able to resume the exercise of the powers and the discharge of the duties of the office.

(4) "Local offices and local officers" means positions in the political subdivisions of the state.

(5) "Office" means the position of head of any and all departments, agencies, boards, or commissions of the state or any of its political subdivisions; all constitutional General Assembly offices; all constitutional and other county offices; all of the judgeships of the state and its political subdivisions; and all of

the positions in the legislative departments of the state or its political subdivisions.

(6) "Officer" means the individual who shall hold an office.

(7) "Political subdivisions" means cities, counties, towns, villages, authorities, and any other bodies created by the state and exercising any of the governmental powers of the state.

(8) "State office" and "state officer" mean positions in the government of this state.

(9) "Unavailable" means either that a vacancy in an office exists as the result of any emergency as defined in paragraph (2) of this subsection and there is no deputy or other successor authorized to exercise all of the powers and discharge all of the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(b) All state officers shall within 30 days after taking office, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of office, designate by title individuals as emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this Code section to ensure their current status. The officer will designate a sufficient number of such emergency interim successors so that there will be not less than three nor more than seven deputies or emergency interim successors or any combination thereof at any time. In the event that any state officer is unavailable following an emergency or disaster and in the event his deputy, if any, is also unavailable, the powers of his office shall be exercised and the duties of his office shall be discharged by his designated emergency interim successors in the order specified. The emergency successors shall exercise the powers and discharge the duties only until such time as the Governor under the Constitution or authority other than this Code section, or other official authorized under the Constitution or this Code section to exercise the powers and discharge the duties of the office of Governor, may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed or elected and qualified as provided by law, or until an officer or his deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of his office.

(c) All emergency interim successors designated under this Code section shall have the same qualifications as are prescribed by law for the officer by whom they are designated.

(d) Designations of emergency interim successors to state officers shall become official upon the officer filing a list of the successors with the Secretary of State, who shall inform the Governor, the Georgia Emergency Management Agency, all emergency interim successors to the officer involved, and the judge of the probate court of the county of legal residence of the successors of all such designations and any changes therein. Any designation of an emergency interim successor may be changed or altered by the officer concerned filing a notice of the change or alteration with the Secretary of State.

(e) All constitutional county officers shall within 30 days after taking office, in addition to any deputy authorized pursuant to law to exercise all the powers and discharge the duties of the office, designate by title individuals as emergency interim successors and specify their order of succession. The successors shall have the same powers, duties, and qualifications as specified by subsections (b) and (c) of this Code section for successors to state officers. Designations of the successors shall be made in the same manner as prescribed for successors to state officers in subsection (d) of this Code section.

(f) The legislative bodies of all political subdivisions of the state are authorized and directed to provide by ordinance or resolution for emergency interim successors for the officers of the political subdivisions. The resolutions and ordinances shall not be inconsistent with this Code section.

(g) At the time of their designation, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

(h) Emergency interim successors shall receive the same compensation as is paid the officer by whom they are appointed. The compensation shall be paid only during such time as a successor shall exercise the powers of the officer by whom he has been designated.

(i) Governmental powers shall be exercised by emergency interim successors appointed under this Code section only during a period of emergency or disaster, as defined by this Code section.

§ 38-3-51. Emergency powers of Governor; termination of emergency; limitations in emergency; immunity

(a) In the event of actual or impending emergency or disaster of natural or human origin, or impending or actual enemy attack, or a public health emergency, within or affecting this state or against the United States, the Governor may declare that a state of emergency or disaster exists. As a condition precedent to declaring that a state of emergency or

disaster exists as a result of a public health emergency, the Governor shall issue a call for a special session of the General Assembly pursuant to Article V, Section II, Paragraph VII of the Constitution of Georgia, which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. The state of emergency or disaster shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with, to the extent that emergency or disaster conditions no longer exist, and terminates the state of emergency or disaster. No state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor. The General Assembly by concurrent resolution may terminate a state of emergency or disaster at any time. Thereupon, the Governor shall by appropriate action end the state of emergency or disaster.

(b) A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to Articles 1 through 3 of this chapter or any other law relating to emergencies or disasters.

(c) The Governor shall have and may exercise for such period as the state of emergency or disaster exists or continues the following additional emergency powers:

(1) To enforce all laws, rules, and regulations relating to emergency management and to assume direct operational control of all civil forces and helpers in the state;

(2) To seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law;

(3) To sell, lend, give, or distribute all or any such property among the inhabitants of the state and to account to the proper agency for any funds received for the property; and

(4) To perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.

(d) In addition to any other emergency powers conferred upon the Governor by law, he may:

(1) Suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(2) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency or disaster;

(3) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(4) Commandeer or utilize any private property if he finds this necessary to cope with the emergency or disaster;

(4.1) Compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. The use of such health care facility may include transferring the management and supervision of the health care facility to the Department of Human Resources for a limited or unlimited period of time not extending beyond the termination of the public health emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; provided, however, that any limitation on firearms under this Code section shall not include an individual firearm owned by a private citizen which was legal and owned by that citizen prior to the declaration of state of emergency or disaster or thereafter acquired in compliance with all applicable laws of this state and the United States; and

(9) Make provision for the availability and use of temporary emergency housing.

(e) When the available funds are not sufficient for the purpose of paying the expenses incident to carrying out the provisions authorized by Articles 1 through 3 of this chapter, the Governor may transfer from any available fund in the state treasury such sum as may be necessary to meet the emergency or disaster; and the moneys so transferred shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

(f) In the event that the Governor proclaims an emergency or disaster, as defined by Articles 1 through 3 of this chapter, to be a catastrophe within the meaning of Article III, Section IX, Paragraph VI(b) of the Constitution of the state, the funds referred to in the paragraph may be utilized by the Governor for the purpose of carrying out the provisions authorized by Articles 1 through 3 of this chapter.

(g) In the event that the Governor proclaims an emergency or disaster, as defined in

Articles 1 through 3 of this chapter, the Governor may provide welfare benefits to the citizens of this state in the form of grants to meet disaster related necessary expenses or serious needs of individuals or families adversely affected by an emergency or disaster in those cases where the individuals or families are unable to meet the expenses or needs from other means, provided that such grants are authorized only when matching federal funds are available for such purposes pursuant to the Disaster Relief Act of 1974 (Pub. L. 93-288).

(h) If the Governor declares a state of emergency solely because of an energy emergency, he shall not have the authority to:

(1) Seize, take for temporary use, or condemn property other than energy resources as authorized by paragraph (2) of subsection (c) of this Code section;

(2) Sell, lend, give, or distribute property other than energy resources as authorized by paragraph (3) of subsection (c) of this Code section; or

(3) Commandeer or utilize property other than energy resources as authorized by paragraph (4) of subsection (d) of this Code section.

(i)(1) The Governor may direct the Department of Human Resources to coordinate all matters pertaining to the response of the state to a public health emergency including without limitation:

(A) Planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state;

(B) Coordinating public health emergency responses between state and local authorities;

(C) Collaborating with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;

(D) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;

(E) Organizing public information activities regarding state public health emergency response operations; and

(F) Providing for special identification for public health personnel involved in a public health emergency.

(2) The following due process procedures shall be applicable to any quarantine or vaccination program instituted pursuant to a declaration of a public health emergency:

(A) Consonant with maintenance of appropriate quarantine rules, the department shall

permit access to counsel in person or by such other means as practicable that do not threaten the integrity of the quarantine;

(B) An order imposing a quarantine or a vaccination program may be appealed but shall not be stayed during the pendency of the challenge. The burden of proof shall be on the state to demonstrate that there exists a substantial risk of exposing other persons to imminent danger. With respect to vaccination, the state's burden of proof shall be met by clear and convincing evidence. With respect to quarantine, the state's burden of proof shall be met by a preponderance of the evidence;

(C) An individual or a class may challenge the order before any available judge of the state courts, the superior courts, the Court of Appeals, or the Supreme Court. Such judge, upon attestation of the exigency of the circumstances, may proceed ex parte with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties. The judge hearing the matter may consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed to determine the interests of a class or classes. The rules of evidence applicable to civil cases shall be applied to the fullest extent practicable taking into account the circumstances of the emergency. All parties shall have the right to subpoena and cross-examine witnesses, but in enforcement of its subpoena powers the court shall take into account the circumstances of the emergency. All proceedings shall be transcribed to the extent practicable. Filing fees shall be waived and all costs borne by the state;

(D) The judge hearing the matter may enter an appropriate order upholding or suspending the quarantine or vaccination order. With respect to vaccination, the order may be applicable on notice to the department or its agents administering the vaccination, or otherwise in the court's discretion. With respect to quarantines, the order shall be automatically stayed for 48 hours;

(E) The department or any party may appeal any order within 24 hours to the Court of Appeals, the Supreme Court, or to any available judge thereof in the event that circumstances render a full court unavailable. If the trial judge has proceeded ex parte or with counsel appointed for the state, the trial court shall either direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees for appeal shall be waived, all costs shall be borne by the state, and such appeals shall be heard expeditiously; and

(F) No provisions of this paragraph shall be construed to limit or restrict the right of habeas corpus under the laws of the United States.

(j) Any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable to any other individual, partnership, association, or corporation by reason thereof in any action seeking legal or equitable relief.

**§ 38-3-61. Declaration of judicial emergency; duration of judicial emergency
Declaration; designation of alternative facility in lieu of court**

(a) An authorized judicial official is authorized to declare the existence of a judicial emergency which shall be done by order either upon his or her own motion or upon motion by any interested person. The order shall state:

- (1) The identity and position of the issuing authorized judicial official;
- (2) The time, date, and place at which the order is executed;
- (3) The jurisdiction or jurisdictions affected by the order;
- (4) The nature of the emergency necessitating the order;
- (5) The period or duration of the judicial emergency; and
- (6) Any other information relevant to the suspension or restoration of court operations.

(b) An order declaring the existence of a judicial emergency shall be limited to an initial duration of not more than 30 days; provided, however, that the order may be modified or extended for no more than two periods not exceeding 30 days each. Any modification or extension of the initial order shall require information regarding the same matters set forth in subsection (a) of this Code section for the issuance of the initial order.

(c) In the event the circumstances underlying the judicial emergency make access to the office of a clerk of court or a courthouse impossible or impractical, the order declaring the judicial emergency shall designate another facility, which is reasonably accessible and appropriate, for the conduct of court business.

§ 38-3-81. Enactment; text

The Emergency Management Assistance Compact is enacted into law and entered into by the State of Georgia with all other states which adopt the compact in a form substantially as follows:

"EMERGENCY MANAGEMENT ASSISTANCE COMPACT

The contracting states solemnly agree that:

ARTICLE I -- PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states

which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II -- GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III -- PARTY STATE RESPONSIBILITIES

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

(2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party

states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV -- LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V -- LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI -- LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII -- SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states.

Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII -- COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX -- REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such request; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X -- EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state

receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI -- IMPLEMENTATION

(a) This compact shall become operative immediately upon its enactment into law by any two states and when Congress has given consent thereto; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII -- VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII -- ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code."

§ 38-3-4. Enforcement

The law enforcement authorities of the state and of the political subdivisions thereof shall enforce the orders, rules, and regulations issued pursuant to Articles 1 through

§ 38-3-5. Injunction; who may obtain, remedy at law irrelevant

The director of emergency management or any person, corporation, firm, or association, in addition to the remedies set forth in Articles 1 through 3 of this chapter, may obtain from a court of competent jurisdiction an injunction to restrain violation of the provisions of Articles 1 through 3 of this chapter. The grant of an injunction is authorized notwithstanding the availability of adequate remedies at law.

§ 36-69-2. "Local emergency" defined

As used in this chapter, the term "local emergency" means the existence of conditions of extreme peril to the safety of persons and property within the territorial limits of a political subdivision of the state or on a campus of an institution within the University System of Georgia caused by natural disasters, riots, civil disturbances, or other situations presenting major law enforcement and other public safety problems, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision of the state and which require the combined forces of other political subdivisions of the state to combat.

§ 36-69-3. Extraterritorial cooperation and assistance to local law enforcement agencies or fire departments; commander of operations

(a) (1) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the chief of police or public safety director of any municipality or chief of police or public safety director of any county police force may, with the approval of the governing authority of any such officer's political subdivision, and the sheriff of any county may cooperate with and render assistance extraterritorially to such local law enforcement agency requesting the same.

(2) (A) Upon the request of a local law enforcement agency for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, the public safety director or chief of police of any institution within the University System of Georgia may, with the approval of the president of such institution, cooperate with and render assistance extraterritorially to such law enforcement agency requesting the same.

(B) Upon the request for assistance in a local emergency, in the prevention or detection of violations of any law, in the apprehension or arrest of any person who violates a criminal law of this state, or in any criminal case, which request is made by a public safety director or chief of police of any institution within the University System of Georgia after approval by the president of such institution, the chief of police or public safety director of any municipality or chief of police or public safety director of any county police force may, with the approval of the governing authority of any such officer's political subdivision, and the sheriff of the county may cooperate with and

render assistance extraterritorially to such law enforcement agency of the institution requesting the same.

(b) Upon the request of any local fire department for assistance in a local emergency, in preventing or suppressing a fire, or in protecting life and property, the fire chief or public safety director of any local political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local fire department requesting the same.

(c) Upon the request of any local law enforcement agency or local director of emergency medical services for assistance in a local emergency or in transporting wounded, injured, or sick persons to a place where medical or hospital care is furnished, emergency medical technicians employed by a political subdivision may, with the approval of the governing authority of such political subdivision, cooperate with and render assistance extraterritorially to such local law enforcement agency or local director of emergency services.

(d) Authorization for furnishing assistance extraterritorially may be granted by the sheriff of any county or the governing authority of a local political subdivision or the president of an institution within the University System of Georgia to any of its agencies or employees covered by this Code section prior to any occurrence resulting in the need for such assistance; provided, however, that any prior authorization granted by the president of an institution within the University System of Georgia for the furnishing of assistance extraterritorially must be submitted to and approved by the board of regents before it becomes effective. Such authorization may provide limitations and restrictions on such assistance furnished extraterritorially, provided that such limitations and restrictions do not conflict with the provisions of Code Sections 36-69-4 through 36-69-6.

(e) The senior officer of the public safety agency of a political subdivision or institution within the University System of Georgia which requests assistance in a local emergency as provided in this Code section shall be in command of the local emergency as to strategy, tactics, and overall direction of the operations with respect to the public safety officers and employees rendering assistance extraterritorially at the request of such public safety agency. All orders or directions regarding the operations of the public safety officers and employees rendering assistance extraterritorially shall be relayed to the senior officer in command of the public safety agency rendering assistance extraterritorially.

§ 36-69-3.1. Out-of-state contracts and mutual aid agreements

Any county or municipality in this state shall be authorized to enter into contracts and mutual aid agreements with counties or municipalities of any other state or with any agency of the United States for the provision of law enforcement services in a local emergency to the extent that the laws of such other state or the United States permit such joint contracts or agreements to furnish one another assistance in law enforcement. Any such contract or mutual aid agreement shall have incorporated therein the provisions of

Code Sections 36-69-4 through 36-69-8. Any such contract or mutual aid agreement entered into by a county shall not become effective until approved by the sheriff of such county.

§ 45-12-32. Powers to prevent violence and maintain order – Promulgation and enforcement of emergency rules and regulations

The Governor is authorized to promulgate and enforce such emergency rules and Regulations as are necessary to prevent, control, or quell violence, threatened or actual, during any emergency lawfully declared by him to exist. In order to protect the public welfare, to protect the persons and property of citizens.

§ 45-12-34. Powers to prevent violence and maintain order – Calling upon military or law enforcement agencies for enforcement of rules and regulations

The Governor shall have emergency power to call upon the military forces of the state or any other state or county law enforcement agency to enforce the rules and regulations authorized by Code Sections 45-12-29 through 45-12-33.

§ 45-12-51. General power to engage services of any person

The Governor shall have the power to engage the services of any competent person for the discharge of any duty required by the laws and essential to the interests of the state or necessary, in an emergency, to preserve the property or funds of the state.

§ 46-7-13. Temporary emergency authority to operate as a motor common or contract carrier.

Notwithstanding any other provision of law to the contrary, in order to authorize the provision of passenger or household goods service for which there is an immediate and urgent need to a point or points, or within a territory, with respect to which there is no motor common or contract carrier service capable of meeting such need, upon receipt of an application for temporary emergency authority and upon payment of the appropriate fee as fixed by statute, the commission, under the authority of this Code section, may, in its discretion and without a hearing or other prior proceeding, grant to any person temporary motor carrier authority for such service. The order granting such authority shall contain the commission's findings supporting its determination under the authority of this Code section that there is an unmet immediate and urgent need for such service and shall contain such conditions as the commission finds necessary with respect to such authority. Unless otherwise provided in this Code section, such emergency temporary motor carrier authority, unless suspended or revoked for good cause within such period, shall be valid for such time as the commission shall specify but not for more than an aggregate of 30 days. Such authority shall in no case be renewed and shall create no presumption that corresponding

permanent authority will be granted thereafter, except that, where a motor carrier granted temporary emergency motor carrier authority under the provisions of this Code section makes application during the period of said temporary emergency authority for permanent motor common or contract carrier authority corresponding to that authorized in its temporary emergency authority, the temporary emergency motor carrier authority will be extended to the finalization of the permanent authority application unless sooner suspended or revoked for good cause within the extended period.

§ 25-3-2. Powers of fire departments in event of emergencies generally

In the event of any fire, explosion, bomb threat, or similar emergency, the fire department in any county, municipality, or other political subdivision shall be authorized to:

(1) Enter any property, building, structure, vehicle, watercraft, aircraft, railroad car, or other place for the purpose of fighting the fire, explosion, or similar hazardous conditions or searching for a bomb or enter any such place which is, in the opinion of the chief officer of the fire department or his designee, endangered by fire, explosion, bomb threat, or similar hazardous conditions;

(2) Cut any wires, electrical or otherwise, or turn off any utility, as deemed necessary to preserve life or property;

(3) Prevent the blocking of any public or private street, road or alley, way or driveway, or emergency lane during any such emergency and remove any vehicles or other obstructions necessary;

(4) Confiscate supplies, chemicals, or equipment necessary for such emergency;

(5) Make any necessary tests; and

(6) Evacuate any building or area necessary.

§ 25-3-3. Provision of assistance during emergencies to federal agencies or officers of the state, or political subdivisions

Any fire department may provide assistance to any agency or officer of the United States government, of this state, or of any political subdivision or authority thereof as may be needed to respond to any emergency or disaster, including, but not limited to, floods, sabotage, civil disturbance, fire, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, blight, drought, infestation, explosion, riot, or energy emergency, as defined by Chapter 3 of Title 38, or to respond to hazardous materials as defined by Article 7 of Chapter 5 of Title 32.

§ 50-13-4. Procedural requirements for adoption, amendment, or repeal of rules; emergency rules; limitation on action to contest rules; legislative override

Specifically: (4b) if any agency finds that an imminent peril to the public health, safety, or welfare, including but not limited to; summary processes such as quarantines, contrabands, seizures, and the like authorized by law without notice, requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. Any such rule adopted relative to a public health emergency shall be submitted as promptly as reasonably practicable to the House of Representatives and Senate Committees on Judiciary. The rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under paragraphs (1) and (2) of subsection (a) of this Code section is not precluded; provided, however, that such a rule adopted pursuant to discharge of responsibility under an executive order declaring a state of emergency or disaster exists as a result of a public health emergency, as defined in Code Section 38-3-3, shall be effective for the duration of the emergency or disaster and for a period of not more than 120 days thereafter.

§ 50-22-9. Waiver of chapter requirements in emergencies

In an emergency situation, agencies may waive all the requirements of this chapter and select by the most expeditious means possible the person to provide the professional services.

290-5-45-.03 Disaster Preparedness Plan; [DHR Rules and Regulations]

(1) Unless specifically exempted in Rule 290-545-.02, every facility shall have an approved or Provisionally approved Disaster Preparedness Plan. Disaster Preparedness Plan rehearsals shall be regularly conducted with a minimum of two rehearsals in each calendar year.

**STATUTORY AUTHORITY IN THE ABSENCE
OF A DELCARED EMERGENCY**

§ 31-2-1. Duty, functions, and powers of department

The Department of Human Resources is created and established to safeguard and promote the health of the people of this state and is empowered to employ all legal means appropriate to that end. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(1) Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease, disorders, and disabilities and to provide research, conduct investigations, and disseminate information concerning reduction in the incidence and proper control of disease, disorders, and disabilities;

(2) Forestall and correct physical, chemical, and biological conditions that, if left to run their course, could be injurious to health;

(3) Regulate and require the use of sanitary facilities at construction sites and places of public assembly and to regulate persons, firms, and corporations engaged in the rental and service of portable chemical toilets;

(4) Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department's rules and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to a disease communicable to man;

(5) Manufacture drugs and biologicals which are not readily available on the market and not manufactured for commercial purposes, when expressly authorized and shown on the minutes of the department; to procure and distribute drugs and biologicals and purchase services from clinics, laboratories, hospitals, and other health facilities and, when authorized by law, to acquire and operate such facilities;

(6) Cooperate with agencies and departments of the federal government and of the state by supplying consultant services in medical and hospital programs and in the health aspects of civil defense;

(7) Detect and relieve physical defects and deformities and provide treatment for mental and emotional disorders and infirmities;

(8) Promote the prevention, early detection, and control of problems affecting the dental health of the citizens of Georgia;

(9) Contract with county boards of health to assist in the performance of services incumbent upon them under Chapter 3 of this title and, in the event of grave emergencies of more than local peril, to employ whatever means may be at its disposal to overcome such emergencies;

(10) Contract and execute releases for assistance in the performance of its functions and the exercise of its powers and to supply services which are within its purview to perform;

(11) Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of disease and conditions deleterious to health or to determine compliance with health laws and rules, regulations, and standards thereunder;

(12) Promulgate and enforce rules and regulations for the licensing of medical facilities wherein abortion procedures under subsections (b) and (c) of Code Section 16-12-141 are to be performed; and, further, to disseminate and distribute educational information and medical supplies and treatment in order to prevent unwanted pregnancy; and

(13) Establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for laboratory services provided, schedules to be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such laboratory services, provided no person shall be denied services on the basis of his inability to pay. All fees paid thereunder shall be paid into the general funds of the State of Georgia. The individual who requests services authorized in this Code section shall pay the fee. As used in this Code section, the term "individual" means a natural person.

§ 31-3-4. Powers

(a) The county board of health is empowered to:

(1) Establish and adopt bylaws for its own governance. Meetings shall be held no less frequently than quarterly;

(2) Exercise responsibility and authority in all matters within the county pertaining to health unless the responsibility for enforcement of such is by law that of another agency;

(3) Take such steps as may be necessary to prevent and suppress disease and conditions deleterious to health and to determine compliance with health laws and rules, regulations, and standards adopted thereunder;

(4) Adopt and enforce rules and regulations appropriate to its functions and powers, provided such rules and regulations are not in conflict with the rules and regulations of the department. Such rules and regulations must be reasonably adapted to the purposes intended and must be within the purview of the powers and duties imposed upon the county board of health by this chapter;

(5) Receive and administer all grants, gifts, moneys, and donations for purposes pertaining to health pursuant to this chapter;

(6) Make contracts and establish fees for the provision of public health services provided by county boards of health, including but not limited to environmental health services, which fees may be charged to persons or to establishments and premises within the county for inspection of such establishments, premises, structures and appurtenances thereto, or for other county board of health services. All such fees may be used to defray costs of providing such local services and shall supplement but not replace state or federal funding. No person shall be denied services on the basis of that person's inability to pay. The scope of services, operating details, contracts, and fees approved by the county board of health shall also be approved by the district director of health. No fees for environmental health services may be charged unless the schedule of fees for such services has been approved by the county governing authority;

(7) Contract with the Department of Human Resources or other agencies for assistance

in the performance of its functions and the exercise of its powers and for supplying services which are within its purview to perform, provided that such contracts and amendments thereto shall have first been approved by the department. In entering into any contracts to perform its functions and to exercise its powers, and for supplying services which are within its purview to perform, any county board of health or any health district created under the authority of Code Section 31-3-15 shall be considered an agency and such agency shall have the authority to contract with any other county board of health; combination of county boards of health; any other health district; public or private hospitals; hospital authorities; medical schools; training and educational institutions; departments and agencies of the state; county or municipal governments; persons, partnerships, corporations, and associations, public or private; the United States government or the government of any other state; or any other legal entity; and

(8) The county board of health in each county of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census is authorized to develop and implement activities for the prevention of injuries and incorporate injury prevention measures in rules and regulations which are within the purview of the county board of health to promulgate which shall be effective when adopted by an ordinance of the county governing authority.

(b) Notwithstanding the provisions contained in subsection (a) of this Code section and Code Section 31-3-5, nothing contained in this Code section or Code Section 31-3-5 shall be construed to empower a county board of health to adopt any rules or regulations or provisions to enforce any rules or regulations pertaining to matters provided for or otherwise regulated pursuant to the provisions of Part 1 of Article 2 of Chapter 8 of Title 12, the "Georgia Comprehensive Solid Waste Management Act," as now or hereafter amended, or the rules and regulations promulgated pursuant to such part.

§ 31-12-2.1. Investigation of potential bioterrorism activity; regulations and planning for public health emergencies

(a) The department shall ascertain the existence of any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency; investigate all such cases to determine sources of infection and to provide for proper control measures; and define the distribution of the illness or health condition. The department shall:

(1) Identify, interview, and counsel, as appropriate, all individuals reasonably believed to have been exposed to risk;

(2) Develop information relating to the source and spread of the risk; and

(3) Close, evacuate, or decontaminate, as appropriate, any facility and decontaminate or destroy any contaminated materials when the department

reasonably suspects that such material or facility may endanger the public health.

(b) The department shall promulgate rules and regulations appropriate for management of any public health emergency declared pursuant to the provisions of Code Section 38-3-51, with particular regard to coordination of the public health emergency response of the state pursuant to subsection (i) of said Code section. Such rules and regulations shall be applicable to the activities of all entities created pursuant to Chapter 3 of this title in such circumstances, notwithstanding any other provisions of law. In developing such rules and regulations, the department shall consult and coordinate as appropriate with the Georgia Emergency Management Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention. The department is authorized, in the course of management of a declared public health emergency, to adopt and implement emergency rules and regulations pursuant to the provisions of subsection (b) of Code Section 50-13-4. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(c) The department shall promulgate, prepare, and maintain a public health emergency plan and draft executive order for the declaration of a public health emergency pursuant to Code Section 38-3-51 and Chapter 13 of Title 50. In preparation of such public health emergency plan and draft executive order, the department shall consult and coordinate as appropriate with the Georgia Emergency Management Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention.

§ 31-12-4. Isolation and segregation of diseased persons; quarantine

The department and all county boards of health may, from time to time, require the isolation or segregation of persons with communicable diseases or conditions likely to endanger the health of others.

§ 45-12-29. Powers to prevent violence and maintain order – General authority [Governor]

The Governor is authorized to perform any action which, in his discretion, is necessary to Prevent overt threats of violence or acts of violence to the personal property of citizens of the state and to maintain peace, tranquility, and good order in the state or in any areas or political subdivision thereof.

§ 45-12-30. Powers to prevent violence and maintain order—Proclamation of emergency; issuance of orders to individuals or groups; enforcement of orders

When, in his opinion, the facts warrant, the Governor shall, by proclamation, declare that, because of unlawful assemblage, violence, overt threats of violence, or otherwise, a danger exists to the person or property of any citizen or citizens of the state and that the peace and tranquility of the state or of any area or political subdivision thereof is threatened, and because thereof an emergency, with reference to said threats and danger, exists. In all such cases, when the Governor shall issue his proclamation he shall be and is further authorized, in coping with said threats and danger, to order and direct any person, corporation, association, or group of persons to do any act which would, in his opinion, prevent danger to life, limb, or property or prevent a breach of the peace; or he may order such person, corporation, association, or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb, or property or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of society; and he shall have full power to enforce such order or proclamation by appropriate means.

§ 45-12-31. Powers to prevent violence and maintain order -- Filing of proclamation; powers of Governor over civil and military officials generally

Upon the issuance of a proclamation as provided for in Code Section 45-12-30, the Governor shall immediately file the same in the office of the Secretary of State for recording. The proclamation shall be effective upon issuance and shall remain in full force and effect until revoked by the Governor; and he is authorized to take and exercise any or all of the following actions, powers, and prerogatives:

- (1) Call out the military forces of the state (state militia) and order and direct said forces to take such action as in his judgment may be necessary to avert the threatened danger and to maintain peace and good order in the particular circumstances;
- (2) Order any sheriff or sheriffs of this state to exercise fully the powers granted them (suppress tumults, riots, and unlawful assemblies in their counties with force and strength when necessary) and to do all things necessary to maintain peace and good order;
- (3) Order and direct the Department of Public Safety and each and every officer thereof to do and perform such acts and services as he may direct and as in his judgment may be necessary to maintain peace and good order in the circumstances;
- (4) Authorize, order, or direct any state, county, or city official to enforce such proclamation by injunction, mandamus, or other appropriate legal action in any and all courts of the state.

***To review the entire text of Georgia laws, visit the Georgia General Assembly website at www.legis.state.ga.us and select “Georgia Code”**

Note: This document is intended to give a general overview of the Georgia Laws related to emergency preparedness, it is not intended to be an exhaustive list of all laws that may be utilized in the event of a pandemic.

SECTION 4.0 PETITION CHECKLISTS AND MODEL ORDERS

SECTION 4.1 Petitions Filed for Involuntary Medical Examinations, Commitment, Appeals of Quarantine Orders

For petitions to compel involuntary medical exams and commitments under O.C.G.A. § 31-14-2 and O.C.G.A. § 31-14-3, hearings must be held “no sooner than seven days and no later than 12 days, excluding Saturdays, Sundays, and holidays, subsequent to the time of filing of the petition.” O.C.G.A. § 31-14-3(a). The superior court judge shall “set the matter for a full and fair hearing” immediately upon filing of the petition. *Id.* Also, appeals of quarantine orders by the DHR or the Governor may be heard by “any available judge of the state courts, the superior courts, the Court of Appeals, or the Supreme Court.” O.C.G.A. § 38-3-51(i)(2)(D).

Section 4.1.1 Checklist For Involuntary Medical Examinations and Treatments

The court may wish to consider some or all of the following regarding the petition for involuntary medical examinations and commitments:

1. Do you have **jurisdiction**? Are you a superior court judge in the county where the person (for whom medical exam/commitment is sought) resides or may be found? (See O.C.G.A. § 31-14-2)
2. Was the **petition executed under oath**? (See O.C.G.A. § 31-14-2)
3. Has the person been served with **notice** of the proceeding which includes the time and place of the hearing, the right to counsel, the right to waive the hearing, and a copy of the petition? (See O.C.G.A. § 31-14-3(a) and O.C.G.A. § 31-14-4)
4. Does the petition seek **pre-hearing detention**? If so, does the petition include an affidavit to support an order for such custody until the hearing (i.e, flight risk or danger of exposing others to infection)? (See O.C.G.A. § 31-14-5)
5. Does the **petition**: (See O.C.G.A. § 31-14-2)

- a. Include **specific evidence** that the person has active tuberculosis?
 - b. State that the evidence has existed **within the preceding 30 days**?
 - c. State that the person presents a **substantial risk of exposing** other persons to an imminent danger of **infection**?
 - d. Include a **statement from a physician** specifying that the physician knows or suspects that the person may have active tuberculosis, the evidence used to form such belief, and **whether or not a full evaluation is necessary**?
6. Does the petition seek an **order for a medical examination**? (See O.C.G.A. § 31-14-3(a))
7. If a petitioner makes a prima facie showing that person is infected with a **highly contagious** communicable disease, will the court order the hearing to be conducted by alternative means (such as by **telephone or video-conference**)? If so: (See Uniform Superior Court Rules 9.1 and 9.2 for guidance in this area)
- a. How will the parties, counsel, witnesses, and court staff be advised of this?
 - b. What steps must be taken to facilitate the hearing (i.e., equipment brought to the courtroom, notify the court reporter, teleconference scheduled,...)?
8. Regarding the **right to counsel** at the hearing: (See O.C.G.A. § 31-14-3(b))
- a. How will the person be advised of the right to counsel?
 - b. If the person cannot afford counsel, who will be appointed to represent the person?
 - c. How will counsel be advised of the appointment?
 - d. How and when will the person and counsel be provided with contact information for each other?
9. Upon the hearing, an **order for commitment and/or treatment** shall be issued if the court finds: (See O.C.G.A. § 31-4-7)
- a. the person has active tuberculosis

- b. the person is violating the rules and regulations of the county board of health despite being ordered by the DHR to comply
 - c. the person presents a substantial risk of exposing others to an imminent danger of infection
 - d. there is no less restrictive remedy (i.e., vaccine, outpatient care, ...)
10. If the conditions for commitment/treatment are not met, the court shall **dismiss the petition and release the person.** (See O.C.G.A. § 31-14-7(a))

Section 4.1.2 Checklist for Appeals of Quarantine Orders

The court may wish to consider some or all of the following regarding appeals of quarantine orders:

1. Do you have **jurisdiction**? Are you a “judge of the state courts, the superior courts, the Court of Appeals, or the Supreme Court.” (See O.C.G.A. § 38-3-51(i)(2)(D))
2. The judge “upon attestation of the exigency of the circumstances, **may proceed ex parte** with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties.” (See O.C.G.A. § 38-3-51(i)(2)(C)) Also, the judge may “on the motion of a party or the court proceed to **determine the interests of a class or classes.**” Id.
3. Considering the exigency of the circumstances, will the court order the appeal to be conducted by alternative means (such as by **telephone or video-conference**)? If so: (See Uniform Superior Court Rules 9.1 and 9.2 for guidance in this area)
 - a. How will the parties, counsel, witnesses, and court staff be advised of this?
 - b. What steps must be taken to facilitate the hearing (i.e., equipment brought to the courtroom, notify the court reporter, teleconference scheduled,...)?
4. Regarding the **right to counsel** at the appeal/hearing: (See O.C.G.A. § 38-3-51(i)(2)(D))
 - a. How will the person be advised of the right to counsel?
 - b. If the person cannot afford counsel, who will be appointed to represent the person?

- c. How will counsel be advised of the appointment?
 - d. How and when will the person and counsel be provided with contact information for each other?
5. Has the state met the burden of proof by showing by a preponderance of the evidence that there exists a substantial risk that the person will expose others to an imminent danger? (See O.C.G.A. § 38-3-51(i)(2)(C))
- a. If yes, the judge may enter an order upholding the quarantine. (See O.C.G.A. § 38-3-51(i)(2)(D))
 - b. If no, the judge may enter an order suspending the quarantine. (See O.C.G.A. § 38-3-51(i)(2)(D))

Credit: Portions of the above checklist reproduced with permission from the Pennsylvania Public Health Law Bench Book which was developed by the Administrative Office of Pennsylvania Courts and the University of Pittsburgh Graduate School of Public Health Center for Public Health Preparedness.

Section 4.1.3 Model Order For Pre-Hearing Detention, Medical Examination

The following model order is provided as an example of legal elements to include in an actual court order of this kind. This form was not promulgated by the Georgia Courts or the Georgia Legislature; it is for illustrative purposes only. This model form is reproduced with permission from the Pennsylvania Public Health Law Bench Book which was developed by the Administrative Office of Pennsylvania Courts and the University of Pittsburgh Graduate School of Public Health Center for Public Health Preparedness, and has been modified for Georgia law.

IN THE SUPERIOR COURT OF _____
STATE OF GEORGIA

Petitioner

DOCKET NO. _____

**ORDER FOR PRE-HEARING
DETENTION/ MEDICAL
EXAMINATION**

:
vs.:
:

Respondent

ORDER

Public Health – Pre-Hearing Detention/ Medical Examination

_____ (health authority) filed a petition pursuant O.C.G.A. § 31-14-2 on _____, 200__ to compel the detention/ medical treatment of respondent.

A hearing will be held on _____, 200__.

Prior to this hearing, petitioner seeks to:

_____ Have respondent taken into custody pending the hearing pursuant to O.C.G.A. § 31-14-5.

_____ Have respondent medically examined pursuant to O.C.G.A. § 31-14-3(a).

Respondent is suspected of being infected with or a carrier of _____.

After conducting a review of this petition, the Court finds that:

_____ The petitioner’s affidavit contains facts supporting the need for custody pending hearing and that a danger exists that the person may conceal himself or herself and/or presents a substantial risk of exposing other persons to an imminent danger of infection.

_____ The petition prays for a medical examination of the person.

Therefore, it is hereby ordered that:

_____ Pursuant to O.C.G.A. § 31-14-5, the sheriff or the sheriff's deputies shall take above-named respondent into custody pending a hearing and impose such confinement as will not endanger other persons.

_____ Pursuant to O.C.G.A. § 31-14-3(a), the respondent shall be examined by a licensed physician with all costs of the examination paid by the county.

_____ Other conditions applicable to the order:

_____.

SO ORDERED this _____ day of _____, 20____.

Judge

Section 4.1.4 Model Order for Involuntary Treatment and Commitment

The following model order is provided as an example of legal elements to include in an actual court order of this kind. This form was not promulgated by the Georgia Courts or the Georgia Legislature; it is for illustrative purposes only. This model form is reproduced with permission from the Pennsylvania Public Health Law Bench Book which was developed by the Administrative Office of Pennsylvania Courts and the University of Pittsburgh Graduate School of Public Health Center for Public Health Preparedness, and has been modified for Georgia law.

IN THE SUPERIOR COURT OF _____
STATE OF GEORGIA

Petitioner

DOCKET NO. _____

**ORDER FOR INVOLUNTARY
TREATMENT/COMMITMENT**

vs.:

Respondent

ORDER

Public Health – Involuntary Treatment/Commitment

_____ (quarantined person), pursuant to O.C.G.A. § 38-3-51(i)(2)(D), having filed an appeal of the quarantine order of the DHR or the Governor on this date, on _____, 200__, seeks the suspension of the quarantine order.

A hearing was held on _____, 200__.

After conducting a hearing on this matter, the court finds that is has been proven to the Court, by clear and convincing evidence, that:

- ___a. Respondent has active tuberculosis
- ___b. Respondent is violating the rules and regulations of the county board of health despite being ordered by the DHR to comply
- ___c. Respondent presents a substantial risk of exposing others to an imminent danger of infection
- ___d. | No remedy that is less restrictive (i.e., vaccine, outpatient care, ...) than involuntary treatment/commitment is available

Therefore, it is hereby ordered that:

Pursuant to O.C.G.A. § 31-14-5, respondent shall be submitted to the custody of the sheriff of _____ County or to the sheriff's deputies to be delivered to the hospital or facility approved by the DHR for treatment/commitment not to exceed two years.

____ Other conditions applicable to the order:
_____.

SO ORDERED this _____ day of _____, 20____.

Judge

Section 4.1.5 Model Order for Upholding Quarantine

The following model order is provided as an example of legal elements to include in an actual court order of this kind. This form was not promulgated by the Georgia Courts or the Georgia Legislature; it is for illustrative purposes only. This model form is reproduced with permission from the Pennsylvania Public Health Law Bench Book which was developed by the Administrative Office of Pennsylvania Courts and the University of Pittsburgh Graduate School of Public Health Center for Public Health Preparedness, and has been modified for Georgia law.

IN THE SUPERIOR COURT OF _____
STATE OF GEORGIA

Petitioner

:
vs.:
:

Respondent

DOCKET NO. _____

**ORDER FOR UPHOLDING
QUARANTINE**

ORDER

Public Health - Quarantine

_____ (health authority) filed a petition pursuant O.C.G.A. § 31-14-2 on _____, 200__ to compel the medical treatment/treatment of respondent.

A hearing was held on _____, 200__.

After conducting a hearing on this matter, the court finds **the state has met the burden of proof** by showing by a preponderance of the evidence that there exists a substantial risk that the person will expose others to an imminent danger

Therefore, it is hereby ordered that:

Pursuant to O.C.G.A. §, O.C.G.A. § 38-3-51(i)(2)(D), **respondent shall continue to be quarantined.**

___ Other conditions applicable to the order:
_____.

SO ORDERED this _____ day of _____, 20 _____.

Judge

Section 4.1.6 Model Order for Suspending a Quarantine Order

The following model order is provided as an example of legal elements to include in an actual court order of this kind. This form was not promulgated by the Georgia Courts or the Georgia Legislature; it is for illustrative purposes only. This model form is reproduced with permission from the Pennsylvania Public Health Law Bench Book which was developed by the Administrative Office of Pennsylvania Courts and the University of Pittsburgh Graduate School of Public Health Center for Public Health Preparedness, and has been modified for Georgia law.

IN THE SUPERIOR COURT OF _____
STATE OF GEORGIA

Petitioner

:
vs.:
:

Respondent

DOCKET NO. _____

**ORDER FOR SUSPENDING A
QUARANTINE ORDER**

ORDER

Public Health - Quarantine

_____ (health authority) filed a petition pursuant O.C.G.A. § 31-14-2 on _____, 200__ to compel the medical treatment/treatment of respondent.

A hearing was held on _____, 200__.

After conducting a hearing on this matter, the court finds **the state has not met the burden of proof** by showing by a preponderance of the evidence that there exists a substantial risk that the person will expose others to an imminent danger

Therefore, it is hereby ordered that:

Pursuant to O.C.G.A. § 38-3-51(i)(2)(D), the quarantine order is suspended.

____ Other conditions applicable to the order:
_____.

SO ORDERED this _____ day of _____, 20__.

Judge

SECTION 4 PETITION MODEL AND CHECKLISTS

SECTION VIDEO-CONFERENCING 4.2

ADMINISTRATIVE OFFICE OF THE COURTS OF GEORGIA LEGAL MEMORANDUM

Re: Existence of Laws, Rules, or Court Orders Allowing for Video-Conferencing of Most Court Proceedings

Question Presented

In the context of a pandemic, whether there is an existing statute, court rule or order that allows for videoconferencing of most court proceedings?

Brief Answer

In a June 8, 2004 Order, the Supreme Court of Georgia adopted uniform video-conferencing rules for specific court systems. The rules listed below reference the Superior Court, the Juvenile Court, the Probate Court, and the Magistrate Court. The rules do not allow the court to hold all hearings entirely by video-conference.

Analysis

Since the video-conferencing rules promulgated by the Supreme Court are limited to the same matters before the Superior, State, Probate, and Magistrate Courts, those matters are listed once. The State Court is included in these rules to the extent that their rules do not conflict. The Juvenile Court rules differ because they *allow* video-conferencing for most matters, except for two specific matters.

I. Uniform Superior, State, Probate, and Magistrate Court Video-Conferencing Rules:

“Rule 9. Telephone and Video-Conferencing”^{*}

9.2 Video-conferencing.

(A) The following matters may be conducted by video-conference:

1. Determination of indigence and appointment of counsel;

^{*} The Uniform Magistrate Court denotes, “Rule 15. Telephone and Video-Conferencing.”

2. Hearings on appearance and appeal bonds;
3. Initial appearance hearings;
4. Probable cause hearings;
5. Applications for arrest warrants;
6. Applications for search warrants;
7. Arraignment or waiver of arraignment;
8. Pretrial diversion and post-sentencing compliance hearings;
9. Entry of pleas in criminal cases;
10. Impositions of sentences upon pleas of guilty or nolo contendere;
11. Probation revocation hearings in felony cases in which the probationer admits the violation and in all misdemeanor cases;
12. Post-sentencing proceedings in criminal cases;
13. Acceptance of special pleas of insanity (incompetency to stand trial);
14. *Situations involving inmates with highly sensitive medical problems or who pose a high security risk; (emphasis added) and*
15. Testimony of youthful witnesses;
16. Ex-parte applications for Temporary Protective Orders under the Family Violence Act and the Stalking Statute;
17. Appearances of interpreters;
- (18. All mental health, alcohol and drug hearings held by the Probate Court pursuant to Title 37 of the Official Code of Georgia provided that the confidentiality prescribed by Title 37 be preserved.)[†]

Notwithstanding any other provisions of this rule, a judge may order a defendant's personal appearance in court for any hearing."

[†] Specific to the Uniform Probate Court Rules

The committee that formed the above rules did not anticipate the court system having to function under the duress of a pandemic. However, the rules do allow a large number of ministerial, pretrial and post-trial hearings to be conducted using video-conferencing technology. Looking to subsection 14, courts are able to conduct the entire trial of an inmate outside of the inmates' physical presence. If the Supreme Court felt that the ends of justice could still be met in a criminal matter by conducting the trial by video-conference, perhaps an extension of this matter to civil trials in times of extended emergency would be appropriate.

Rule 9.2 (C) does contemplate civil actions: "...In civil matters, the discretion to allow testimony of a witness by video conference shall rest with the trial judge. In any criminal matter, a timely objection shall be sustained; however, such objection shall act as a motion for continuance and a waiver of any speedy trial demand." However, the matters listed in Rule 9.2(A) seem to involve entirely criminal matters and therefore conflict with allowing video-conferencing of civil action matters.

The Juvenile Court Rules, listed below, give the trial court broader freedom to decide what matters may be conducted over video-conference.

II. Uniform Juvenile Court Rules:

Rule 9. Telephone and Video Conferencing

9.2 Video-conferencing.

(A) At the discretion of the court, any Juvenile Court matters may be conducted by video-conference with the following exceptions:

1. Formal adjudicatory hearings on Petitions alleging the delinquency or unruliness of a child; and
2. Hearings alleging the violation of a juvenile court protective order which may result in the loss of liberty of the person alleging to have violated the protective order.

Notwithstanding any other provisions of this rule, a judge may order a party's personal appearance in court for any hearing. Furthermore, in civil matters transferred from the superior court to the juvenile court, the court may require compliance with Uniform Superior Court Rule 9.2."

III. The Court of Appeals of Georgia

The Court of Appeals of Georgia has not promulgated any rules establishing the use of video-conferencing. With reasonable notice, the court may hear oral arguments "at places other than the seat of government." O.C.G.A. Section 15-3-1. The Clerk of the Court,

William L. Martin, III, confirms this. In the event of a pandemic or health emergency in Atlanta, the Court would be able to continue functioning in a remote location.

IV. The Supreme Court of Georgia

The Supreme Court of Georgia also has not promulgated any rules establishing the use of video-conferencing in its court. However, the attached newspaper article shows that it has allowed hearings over this form of media in the past. *See* WALLACE, RON, “Murder Appeal Argued via Video Conference.” (Jan. 31, 2005). Therefore, the Supreme Court may hold hearings by video-conference within its discretion.

V. The Atlanta Judicial Circuit

In the Atlanta Judicial Circuit, Local Rule 160 (attached) authorizes the Superior, State and Magistrate Courts to conduct video hearings with the defendant remaining at the jail, and the Judge remaining at the court house. Only the following matters will be handled by audiovisual means:

- a. Determination of indigence and appointment of counsel;
- b. Hearings on appearance and appeal bonds;
- c. Probable cause hearings;
- d. Arraignment or waiver of arraignment;
- e. Entry of pleas in criminal cases;
- f. Imposition of sentences upon pleas of guilty or nolo contendere. However, the sentence may not require additional confinement, but may include time already served plus appropriate probation;
- g. Probation revocation hearings, provided that the revocation does not result in additional confinement;
- h. All sentences or revocations of probation which will require additional incarceration will not be imposed by audiovisual means;
- i. Acceptance of special pleas of insanity (incompetency to stand trial);
- j. Extradition hearings.

The Supreme Court’s 2004 Order expanded the type of matters courts could address by videoconferencing. It may be helpful to construe this rule (which was approved by order of the Georgia Supreme Court in 1991) to remain effective for the State Court of Fulton County if the Uniform Superior Court rules differ from the State Court rules, such as subsections f, g, h, and j.

Conclusion

Although the Georgia court system has not established rules allowing the courts to function completely by video-conference, these rules and the deliberations of the committees that formed them may provide insight into why the ends of the judicial system require that some judicial hearings be held physically ‘in person.’ However, in a time of extended health emergency, or pandemic, the court system may need to resort to

video-conferencing technology in order to keep the various branches of government and their agencies running smoothly. The ability for a court to rule upon the authority of a government branch or agency to act in the best interest of the public is essential to maintaining the health, safety and welfare of the public. During the event of an extended health emergency, if an in-person hearing is not possible, the court system should be able to function in an alternative manner by the use of video-conferencing.

This administrative legal opinion was issued by the AOC Legal Department, with the assistance of Collin Glidewell, on October 23, 2006.

SECTION 5 APPENDICES

SECTION 5.1 Division of Public Health Contact Information

DISTRICT 1, UNIT 1, ROME, NORTHWEST GEORGIA HEALTH DISTRICT BARTOW, CATOOSA, CHATTOOGA, DADE, FLOYD*, GORDON, HARALSON, PAULDING, POLK, WALKER

District Health Director
C. Wade Sellers, M.D., MPH
cwsellers@dhr.state.ga.us

Contact Person
Kathy Kitchens
706-295-6704
kckitchens@dhr.state.ga.us

Address
1309 Redmond Circle Northwest
Rome, Georgia 30165-1307
Phone No: 706-295-6704
Fax No: 706-802-5435

Program Manager
Margaret Bean
706-295-6647
Fax: 706-802-5681
mrbean@dhr.state.ga.us

Administrator
Chuck Wilson
706-802-5589
Fax: 706-295-6015
[cewilson@dhr.state.ga.us](mailto:cwilson@dhr.state.ga.us)

Clinical Coordinator
Gayle Brannon
706-802-5219
Fax: 706-802-5681
cgbrannon@dhr.state.ga.us

Environmentalist
Tim Allee
706-295-6650
Fax: 706-802-5290
tcallee@dhr.state.ga.us

EMS Coordinator
David Loftin
706-295-6154
Fax:
706-802-5292
cdloftin@dhr.state.ga.us

DISTRICT 1, UNIT 2, DALTON, NORTHWEST GEORGIA HEALTH DISTRICT CHEROKEE*, FANNIN, GILMER, MURRAY, PICKENS, WHITFIELD

District Health Director
Harold Pitts, M.D., J.D.
hwipitts@dhr.state.ga.us

Contact Person
Jennifer Smith
706-272-2342
jlsmith@dhr.state.ga.us

Address
100 W. Walnut Avenue
Suite 92
Dalton, Georgia 30720-8427
Phone No: 706-272-2342
Fax No: 706-272-2221

Program Manager
Louise Hamrick
706-272-2342
Fax: 706-272-2221
lwhamrick@dhr.state.ga.us

Administrator
Lamar Hamill
706-272-2342
Fax: 706-272-2221
dhamill@dhr.state.ga.us

Clinical Coordinator
Debbie Robbins
706-272-2342
Fax: 706-272-2221
dlobbins@dhr.state.ga.us

Environmentalist

Ray King
 706-272-2342
 Fax: 706-272-2221
rrking@dhr.state.ga.us

EMS Coordinator

David Loftin
 706-295-6154
 Fax: 706-802-5292
cdloftin@dhr.state.ga.us

DISTRICT 2, GAINESVILLE, NORTH HEALTH DISTRICT

Banks, Dawson, Forsyth, Franklin, Habersham, Hall*, Hart, Lumpkin, Rabun, Stephens, Towns, Union, White

District Health Director

David N. Westfall, M.D., CPE
dnwestfall@dhr.state.ga.us

Administrator

Gregg Sheffield
 770-535-5743
gmsheffield@dhr.state.ga.us

Contact Person

Kathy Moreland
 770-535-5866
kamoreland@dhr.state.ga.us

Clinical Coordinator

Angie Hanes
 770-535-5876
 Fax: 770-535-5958
ahhanes@dhr.state.ga.us

Address

1280 Athens Street
 Gainesville, Georgia 30507-7000

Environmentalist

Larry Walker
 770-535-5743
lewalker@dhr.state.ga.us

Phone No: 770-535-5743

Fax No: 770-535-5958

Program Manager

Eddie Parsons, Ph.D.
 770-535-5743
eiparsons@dhr.state.ga.us

EMS Coordinator

Earl McGrotha
 770-535-5743
ehmcgrotha@dhr.stat.ga.us

DISTRICT 3-1, MARIETTA, COBB/DOUGLAS HEALTH DISTRICT

COBB*, DOUGLAS

District Health Director

Alpha Fowler Bryan, M.D.
afbryan@dhr.state.ga.us

Administrator

Ty Carlson
 770-514-2342
 Fax: 770-514-2811
NTCarlso@dhr.state.ga.us

Contact Person

Virginia Freeman or
vfreeman@dhr.state.ga.us
 Pamela Mashburn
 770-514-2330
pmashburn@dhr.state.ga.us

Clinical Coordinator

Patti Duckworth
 770-514-2496
 Fax: 770-514-2414
pgduckwo@dhr.state.ga.us

Address

1650 County Services Parkway
 Marietta, Georgia 30008-4010
 Phone No: 770-514-2330
 Fax No: 770-514-2320

Environmentalist

Tom Campbell
 3830 S. Cobb Dr.
 Suite 102
 Smyrna, GA 30080
 770-435-7815
 Fax: 770-431-7410
tjcampbe@dhr.state.ga.us

Program Manager

Lisa Crossman
 770-514-2323
 Fax: 770-514-2320
lcrossma@dhr.state.ga.us

EMS Coordinator

Mary Billings
2600 Skyland Dr.
Upper Level
Atlanta, GA 30319
404-248-8995
Fax: 404-248-8948
wmbillings@dhr.state.ga.us

DISTRICT 3, UNIT 2, ATLANTA, FULTON HEALTH DISTRICT
FULTON*

District Health Director

Steven R. Katkowsky, M.D.
srkatkowsky@dhr.state.ga.us

Contact Person

Glenda Robinson
404-730-1242
Glenda.robinson@fultoncountyga.gov

Address

Fulton Co. Dept of Health and Wellness
99 Jessie Hill Jr., Dr.
Atlanta, Georgia 30303-3045

Phone No: 404-730-1202
Fax No: 404-730-1294

Program Manager

No Position for Program Manager

Administrator

Christine Greene, Acting
404-730-1214
Fax: 404-730-1233
csgreene@dhr.state.ga.us

Clinical Coordinator

Dr. Kim Turner
404-730-1447
Fax: 404-730-1440
Kbturner1@dhr.state.ga.us

Environmentalist

John Gormley
404-730-1305
Fax: 404-730-1462
jhgormley@dhr.state.ga.us

EMS Coordinator

Al Simmons
404-730-1409
Fax: 404-730-1283
alsimmons@dhr.state.ga.us

DISTRICT 3, UNIT 3, JONESBORO, CLAYTON COUNTY HEALTH DISTRICT
Clayton*

District Health Director

Stephen Morgan, M.D.
stmorgan@dhr.state.ga.us

Contact Person

Helen Garrett
678-610-7258
hgarrett@dhr.state.ga.us

Address

1117 Battlecreek Road
Jonesboro, GA 30236-2407
Phone No: 678-610-7193
Fax No: 770-603-4872

Program Manager

Jennifer Beane
678-610-7196
jbeane@dhr.state.ga.us

Administrator

Karen Babineau
678-610-7197
kibabineau@dhr.state.us

Clinical Coordinator

Dianne Banister
678-610-7196
dbbanister@dhr.state.ga.us

Environmentalist

Walter Howard
678-610-7430
Fax: 770-603-4874
wjhoward@dhr.state.ga.us

EMS Coordinator

Marty Billings
 2600 Skyland Dr.
 Upper Level
 Atlanta, GA 30319
 404-248-8995
 Fax: 404-248-8948
wmbillings@dhr.state.ga.us

DISTRICT 3, UNIT 4, LAWRENCEVILLE, East Metro Health District

Gwinnett*, Newton, Rockdale

District Health Director

Lloyd Hofer, M.D., MPH
lmhofer@dhr.state.ga.us

Contact Person

Suzette Gonzales
 678-442-6908
ssgonzales@dhr.state.ga.us

Address

P.O. Box 897
 Lawrenceville, Georgia 30046-0897
 2570 Riverside Parkway
 Lawrenceville, Georgia 30045-3339
 Phone No: 770-339-4260
 Fax No: 770-339-2334

Program Manager

Stephanie Phillips
 678-442-6900
SBPhillips@dhr.state.ga.us

Program Director

Connie Russell
 678-442-6865
 Fax: 770-963-1418
crussell@dhr.state.ga.us

Administrator

Jim Griffin
 770-339-4260
 Fax: 770-237-5319
jlgriffin@dhr.state.ga.us

Clinical Coordinator

Debra C. Crowley, RNC
 678-442-6868
 Fax 770-339-2334
dccrowley@dhr.state.ga.us

Environmentalist

Joseph Sternberg
 678-376-3217
 Fax: 770-963-8420
jsternberg@dhr.state.ga.us

EMS Coordinator

Marty Billings
 2600 Skyland Dr.
 Upper Level
 Atlanta, GA 30319
 404-248-8995
 Fax: 404-248-8948
wmbillings@dhr.state.ga.us

DISTRICT 3, UNIT 5, DECATUR, DeKalb Health District

DeKalb*

District Health Director

District Health Director
 S. Elizabeth Ford, M.D., MBA, FAAP
 404-294-3700
seford@dhr.state.ga.us

Contact Person

Sandra Piñeyro
 404-294-3787
scpineyro@dhr.state.ga.us

Address

DeKalb County Board of Health
 P.O. Box 987
 Decatur, Georgia 30031-1701
 445 Winn Way, Suite 553
 Decatur, Georgia 30030-1707
 Phone No: 404-294-3700
 Fax No: 404-294-3715

Program Manager

Les Richmond M.D.
404-294-3743
Fax: 404-508-7862
ljrichmond@dhr.state.ga.us

Gloria Chen
RN, MBA, EdD
404-294-3798
Fax: 404-508-7862
gvchen@dhr.state.ga.us

Administrator

Dianne McWethy
404-508-7842
Fax: 404-297-7150
drmcwethy@dhr.state.ga.us

Environmentalist

Janice Buchanon
Interim
404-508-7912
Fax: 404-508-7979
jdbuchanon@dhr.state.ga.us

EMS Coordinator

Billy Watson
Interim
2600 Skyland Dr.
Atlanta, GA 30319
404-248-8995
Fax: 404-248-8948
brwatson@dhr.state.ga.us

Clinical Coordinator

DISTRICT 4, LAGRANGE, LaGrange Health District

Butts, Carroll, Coweta, Fayette, Heard, Henry, Lamar, Meriwether, Pike, Spalding, Troup*, Upson

Michael L. Brackett, M.D.
mlbrackett@dhr.state.ga.us

**District Health Director
Contact Person**

Debbi Heard
706-845-4035
daheard@dhr.state.ga.us

Clinical Coordinator

Susan Ayers
706-845-4035
Fax:
Susan Ayers
706-845-4035
Fax: 706-845-4038
spayers@dhr.state.ga.us

Address

122-A Gordon Commercial Drive
LaGrange, Georgia 30240-5740
Phone No: 706-845-4035
Fax No: 706-845-4350
Fax No. 706-845-4038

Environmentalist

Rodney Hilley
706-845-4035
Fax:
706-845-4035
Fax: 706-845-4038
rhhilley@dhr.state.ga.us

Program Manager

John G. Darden
706-845-4035
Fax : 706-845-4038
jgdarden@dhr.state.ga.us

EMS Coordinator

Billy Watson
Interim
2600 Skyland Dr.
Atlanta, GA 30319
404-248-8995
Fax: 404-248-8948
brwatson@dhr.state.ga.us

Administrator

Wyndia Wortham
706-845-4035
Fax : 706-845-4038
wwwortham@dhr.state.ga.us

DISTRICT 5, UNIT 1, DUBLIN, South Central Health District

Bleckley, Dodge, Johnson, Laurens*, Montgomery, Pulaski, Telfair, Treutlen, Wheeler, Wilcox

District Health Director

Lawton C. Davis, M.D.
lcdavis@dhr.state.ga.us

Contact Person

A. Kay Stevenson
478-275-6565
akstevenson@dhr.state.ga.us

Address

2121-B Bellevue Road
Dublin, Georgia 31021-2998
Phone No: 478-275-6545
Fax No: 478-275-6575

Program Manager

Jannell Knight
478-275-6545
jrknight@dhr.state.ga.us

Administrator

Bruce Evans
478-275-6545
bwevens@dhr.state.ga.us

Clinical Coordinator

Donna Forth
478-275-6545
dqforth@dhr.state.ga.us

Environmentalist

Mark Harden
478-275-6545
maharden@dhr.state.ga.us

EMS Coordinator

Chris Threlkeld
158 Sammons Industrial Pkwy, Suite 101
Eatonton, GA 31024
706-484-2991
Fax: 706-484-2994
cwthrelkeld@dhr.state.ga.us

DISTRICT 5, UNIT 2, MACON, North Central Health District

Baldwin, Bibb*, Crawford, Hancock, Houston, Jasper, Jones, Monroe, Peach, Putnam, Twiggs, Washington, Wilkinson

District Health Director

Joseph R. Swartwout, M.D.
478-751-6247
jrswartwout@dhr.state.ga.us

Contact Person

Glenda Smith
478-751-6247
gmsmith3@dhr.state.ga.us

Address

811 Hemlock Street
Macon, Georgia 31201-2198
Phone No: 478-751-6303
Fax No: 478-751-6099

Program Manager

Roy M. Moore
478-751-3346
Fax: 478-751-6099
rmmoore@dhr.state.ga.us

Administrator

Nancy Mason
478-751-4133
nwmason@dhr.state.ga.us

Clinical Coordinator

Christy Sims
478-751-6119
clsims@dhr.state.ga.us

Environmentalist

David Blankenship
478-751-6114
djblankenship@dhr.state.ga.us

EMS Coordinator

Chris Threlkeld
158 Sammons Industrial Pkwy, Suite 101
Eatonton, GA 31024
706-484-2991
Fax: 706-484-2994
cwthrelkeld@dhr.state.ga.us

DISTRICT 6, AUGUSTA, East Central Health District

Burke, Columbia, Emanuel, Glascock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond*, Screven, Taliaferro, Warren, Wilkes

District Health Director
Malcolm I. Page, M.D. (ACTING)
mipage@dhr.state.ga.us

Contact Person
Helen Smith
706-667-4257
Hlsmith6@dhr.state.ga.us

Address
1916 North Leg Road
Augusta, Georgia 30909-4437
Phone No: 706-667-4250
Fax No: 706-667-4365

Program Manager
John Nolan
706-667-4252
jmnolan@dhr.state.ga.us

Administrator
Barbara Spires
706-667-4330
bjspires@dhr.state.ga.us

Clinical Coordinator
Donna Scott
706-667-4296
descott@dhr.state.ga.us

Environmentalist
John Tebeau
706-667-4346
jrtebeau@dhr.state.ga.us

EMS Coordinator
Lawanna Mercer-Cobb
706-667-4338
Lmcobb@dhr.state.ga.us

DISTRICT 7, COLUMBUS, West Central Health District

Chattahoochee, Clay, Crisp, Dooley, Harris, Macon, Muscogee*, Marion, Quitman, Randolph, Schley, Stewart, Sumter, Talbot, Taylor, Webster

District Health Director
Zsolt Koppanyi, M.D., MPH
zhkoppanyi@dhr.state.ga.us

Contact Person
Charlene Ellis
706-321-6108
ccellis@dhr.state.ga.us

Address
P.O. Box 2299
Columbus, Georgia 31902-2299
2100 Comer Avenue
Columbus, Georgia 31904-8725
Phone No: 706-321-6300
Fax No: 706-321-6126

Program Manager
Ed Saidla
706-321-6101
jesaidla@dhr.state.ga.us

Administrator
Margaret B. Gosden
706-321-6103
mbgosden@dhr.state.ga.us

Clinical Coordinator
Eileen Albritton
706-321-6102
emalbritton@dhr.state.ga.us

Environmentalist
Jerome Deal
706-321-6185
ejdeal@dhr.state.ga.us

EMS Coordinator
Sam Cunningham
706-321-6151
srcunningham@dhr.state.ga.us

DISTRICT 8, UNIT 1, VALDOSTA, South Health District

Ben Hill, Berrien, Brooks, Cook, Echols, Irwin, Lanier, Lowndes*, Tift, Turner

District Health Director

Lynne D. Feldman, M.D., MPH
ldfeldman@dhr.state.ga.us

Contact Person

Theresa Clark
229-245-6431
ttclark@dhr.state.ga.us

Address

P.O. Box 5147
Valdosta, Georgia 31603-5147
312 North Patterson Street
Valdosta, Georgia 31601-5526
Phone: 229-333-5290
Fax No: 229-333-7822

Program Manager

Elsie Napier
229-245-6415
ecnapier@dhr.state.ga.us

Administrator

Sherrie White
229-245-6439
swhite@dhr.state.ga.us

Clinical Coordinator

Gene Godfrey
229-245-6433
cegodfrey@dhr.state.ga.us

Environmentalist

Tad Williams
229-333-7827
twilliams@dhr.state.ga.us

EMS Coordinator

Robert Vick
319 N. Main Street
P.O. Box 3637
Moultrie, GA 31776
229-891-7034
Fax: 229-891-7031
rdvick@dhr.state.ga.us

DISTRICT 8, UNIT 2, ALBANY, Southwest Health District

Baker, Calhoun, Colquitt, Dougherty*, Decatur, Early, Grady, Lee, Miller, Mitchell, Seminole, Terrell,
Thomas, Worth

District Health Director

Jacqueline H Grant, M.D., MPH, MPA
jhgrant@dhr.state.ga.us

Contact Person

Nancy Rumph
229-430-4127
nhrumph1@dhr.state.ga.us

Address

1109 North Jackson Street
Albany, Georgia 31701-2022
Phone: 229-430-4127
Fax No: 229-430-5143

Program Manager

Brenda Greene
229-430-4599
bmgreene@dhr.state.ga.us

Administrator

Carol Williams
229-430-4036
Cjwilliams4@dhr.state.ga.us

Clinical Coordinator

Vacant

Environmentalist

Dewayne Tanner
229-430-4129
cdtanner@dhr.state.ga.us

EMS Coordinator

Robert Vick
319 N. Main Street
P.O. Box 3637
Moultrie, GA 31776
229-891-7034
Fax: 229-891-7031
rdvick@dhr.state.ga.us

DISTRICT 9, UNIT 1, SAVANNAH/BRUNSWICK, Coastal Health District

Bryan, Camden, Chatham*, Effingham, Glynn, Liberty, Long, McIntosh

District Health Director

W. Douglas Skelton, M.D.
wdskelton@dhr.state.ga.us

Contact Person

Ruthie Smoak
912-644-5205
rsmoak@dhr.state.ga.us

Address

P. O. Box 15879
Savannah, Georgia 31416-2579
24 Oglethorpe Professional Boulevard
Savannah, Georgia 31406-3613

Phone: 912-644-5210
Fax: 912-644-5220

Program Manager

Randy McCall
912-262-2342
Fax: 912-262-2339
rsmccall@dhr.state.ga.us

Administrator

Brent Jordan
912-644-5820
Fax: 912-356-2918
bhjordan@dhr.state.ga.us

Clinical Coordinator

Betty Dixon
912-644-5201
Fax: 912-644-5220
etdixon@dhr.state.ga.us

Environmentalist

Saroyi Morris
912-262-3032
Fax: 912-262-2339
scmorris@dhr.state.ga.us

EMS Coordinator

Shirley Starling
912-264-3907
Fax: 912-264-2504
sdstarling@dhr.state.ga.us

DISTRICT 9, UNIT 2, WAYCROSS, Southeast Health District

Appling, Atkinson, Bacon, Brantley, Bulloch, Candler, Charlton, Clinch, Coffee, Evans, Jeff Davis, Pierce, Tattnall, Toombs, Ware*, Wayne

District Health Director

Rosemarie Parks, M. D., MPH
rdparks@dhr.state.ga.us

Contact Person

Melinda Monroe
912-285-6020
mtmonroe@dhr.state.ga.us

Address

1101 Church Street
Waycross, Georgia 31501-3525
Phone No: 912-285-6010
Fax No: 912-284-2980

Program Manager

Susan Horne
912-285-6020
Fax: 912-284-2980
sthorne@dhr.state.ga.us

Administrator

Cindy Sowell 912-285-6037
Fax: 912-287-4033
cmsowell@dhr.state.ga.us

Clinical Coordinator

Patricia Brannen
912-287-5897
Fax: 912-285-6004
pbbannen@dhr.state.ga.us

Environmentalist

Dwain Butler
912-284-2976
Fax: 912-284-2980
djbutler@dhr.state.ga.us

EMS Coordinator

Shirley Starling
912-264-3907
Fax: 912-264-2504
sdstarling@dhr.state.ga.us

DISTRICT 10, ATHENS, Northeast Health District

Barrow, Clarke*, Elbert, Greene, Jackson, Madison, Morgan, Oconee, Oglethorpe, Walton

District Health Director

Claude A. Burnett, M.D., MPH
cabmd@dhr.state.ga.us

Contact Person

Linda McGinnis
706-583-2870
lmcginnis@dhr.state.ga.us

Address

220 Research Drive
Athens, Georgia 30605-2738

Phone No: 706-583-2870
Fax No: 706-548-5181

Program Manager

Louis Kudon, PhD
706-583-2798
lkudon@dhr.state.ga.us

Administrator

Joe Henneberger
706-583-2768
jbheneberger@dhr.state.ga.us

Clinical Coordinator

Carol Burnes
706-583-2777
caburnes@dhr.state.ga.us

Environmentalist

Todd Jones
189 Paradise Blvd Athens, GA 30607
706-583-2854
Fax: 706-583-2665
Ctjones2@dhr.state.ga.us

EMS Coordinator

Earl McGrotha
706-583-2862
Fax: 706-227-7960
ehmcgrotha@dhr.state.ga.us

SECTION 5.0 APPENDICES

SECTION 5.2 Table of Authorities

Appendix A: Georgia Statues and Regulations in re Involuntary Medical Examinations

O.C.G.A. § 31-12-2.1. Duties relating to public health emergency

(a) The department shall ascertain the existence of any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency; investigate all such cases to determine sources of infection and to provide for proper control measures; and define the distribution of the illness or health condition. The department shall:

- (1) Identify, interview, and counsel, as appropriate, all individuals reasonably believed to have been exposed to risk;
- (2) Develop information relating to the source and spread of the risk; and
- (3) Close, evacuate, or decontaminate, as appropriate, any facility and decontaminate or destroy any contaminated materials when the department reasonably suspects that such material or facility may endanger the public health.

(b) The department shall promulgate rules and regulations appropriate for management of any public health emergency declared pursuant to the provisions of Code Section 38-3-51, with particular regard to coordination of the public health emergency response of the state pursuant to subsection (i) of said Code section. Such rules and regulations shall be applicable to the activities of all entities created pursuant to Chapter 3 of this title in such circumstances, notwithstanding any other provisions of law. In developing such rules and regulations, the department shall consult and coordinate as appropriate with the Georgia Emergency Management Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention. The department is authorized, in the course of management of a declared public health emergency, to adopt and implement emergency rules and regulations pursuant to the provisions of subsection (b) of Code Section 50-13-4. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(c) The department shall promulgate, prepare, and maintain a public health emergency plan and draft executive order for the declaration of a public health emergency pursuant

to Code Section 38-3-51 and Chapter 13 of Title 50. In preparation of such public health emergency plan and draft executive order, the department shall consult and coordinate as appropriate with the Georgia Emergency Management Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention.

O.C.G.A. § 31-2-1. The department; its duties, functions, and powers

The Department of Human Resources is created and established to safeguard and promote the health of the people of this state and is empowered to employ all legal means appropriate to that end. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

- (1) Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease, disorders, and disabilities and to provide research, conduct investigations, and disseminate information concerning reduction in the incidence and proper control of disease, disorders, and disabilities;
- (2) Forestall and correct physical, chemical, and biological conditions that, if left to run their course, could be injurious to health;
- (4) Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department's rules and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to a disease communicable to man;
- (7) Detect and relieve physical defects and deformities and provide treatment for mental and emotional disorders and infirmities;
- (11) Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of disease and conditions deleterious to health or to determine compliance with health laws and rules, regulations, and standards thereunder...

Ga. Comp. R. & Regs. 40-1-2-.07. Emergency Rules

If the commissioner finds that an imminent peril to the public health, safety, or welfare (including but not limited to summary processes such as quarantines, contrabands, seizures and the like authorized by law without notice), requires adoption of a rule upon fewer than thirty (30) days' notice and states in writing his reason for this finding, he may proceed without prior notice or hearing or upon an abbreviated notice and hearing that he finds practicable, to adopt an emergency rule. The rule may be effective for a period of not to exceed 120 days and will be set out in said rule, but the adoption of an identical rule under Rule 40-1-2-.05 through 40-1-2-.06 hereof is not precluded.

Appendix B: Judicial Emergency Act of 2004

O.C.G.A. § 38-3-60. Definitions

As used in this part, the term:

(1) "Authorized judicial official" means any of the following officials when acting with regard to his or her respective jurisdiction:

- (A) The Chief Justice of the Georgia Supreme Court;
- (B) The Chief Judge of the Georgia Court of Appeals;
- (C) A chief judge of a Georgia superior court judicial circuit; or

(D) The replacement for or successor to any of the officials set forth in subparagraphs (A) through (C) of this paragraph, as determined by the applicable rules of incapacitation and succession, should such official become incapacitated or otherwise unable to act.

(2) "Judicial emergency" means:

- (A) A state of emergency declared by the Governor under Part 1 of this article;
- (B) A public health emergency under Code Section 31-12-1.1;
- (C) A local emergency under Code Section 36-69-2; or
- (D) Such other serious emergency

when, as determined by an authorized judicial official, the emergency substantially endangers or infringes upon the normal functioning of the judicial system, the ability of persons to avail themselves of the judicial system, or the ability of litigants or others to have access to the courts or to meet schedules or time deadlines imposed by court order or rule, statute, or administrative rule or regulation.

HISTORY: Code 1981, § 38-3-60, enacted by Ga. L. 2004, p. 420, § 3.

O.C.G.A. § 38-3-61. Declaration of judicial emergency; duration of judicial emergency declaration; designation of alternative facility in lieu of court

(a) An authorized judicial official is authorized to declare the existence of a judicial emergency which shall be done by order either upon his or her own motion or upon motion by any interested person. The order shall state:

- (1) The identity and position of the issuing authorized judicial official;
- (2) The time, date, and place at which the order is executed;
- (3) The jurisdiction or jurisdictions affected by the order;
- (4) The nature of the emergency necessitating the order;
- (5) The period or duration of the judicial emergency; and
- (6) Any other information relevant to the suspension or restoration of court operations.

(b) An order declaring the existence of a judicial emergency shall be limited to an initial duration of not more than 30 days; provided, however, that the order may be modified or extended for no more than two periods not exceeding 30 days each. Any modification or extension of the initial order shall require information regarding the same matters set forth in subsection (a) of this Code section for the issuance of the initial order.

(c) In the event the circumstances underlying the judicial emergency make access to the office of a clerk of court or a courthouse impossible or impractical, the order declaring the judicial emergency shall designate another facility, which is reasonably accessible and appropriate, for the conduct of court business.

HISTORY: Code 1981, § 38-3-61, enacted by Ga. L. 2004, p. 420, § 3.

O.C.G.A. § 38-3-62. Suspension or tolling of deadlines and time schedules in event of judicial emergency

An authorized judicial official in an order declaring a judicial emergency, or in an order modifying or extending a judicial emergency order, is authorized to suspend, toll, extend, or otherwise grant relief from deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters, including, but not limited to:

- (1) A statute of limitation;
- (2) The time within which to issue a warrant;
- (3) The time within which to try a case for which a demand for speedy trial has been filed;
- (4) The time within which to hold a commitment hearing;
- (5) A deadline or other schedule regarding the detention of a juvenile;
- (6) The time within which to return a bill of indictment or an accusation or to bring a matter before a grand jury;
- (7) The time within which to file a writ of habeas corpus;
- (8) The time within which discovery or any aspect thereof is to be completed;
- (9) The time within which to serve a party;
- (10) The time within which to appeal or to seek the right to appeal any order, ruling, or other determination; and
- (11) Such other legal proceedings as determined to be necessary by the authorized judicial official.

HISTORY: Code 1981, § 38-3-62, enacted by Ga. L. 2004, p. 420, § 3; Ga. L. 2006, p. 893, § 6/HB 1421.

O.C.G.A. § 38-3-63. Notification to other judicial officials and public

Upon an authorized judicial official issuing an order declaring the existence of a judicial emergency, or any modification or extension of such an order, the authorized judicial official issuing the order, modification, or extension to the extent permitted by the circumstances underlying the judicial emergency shall:

(1) Immediately notify the Chief Justice of the Georgia Supreme Court of the action;

(2) Notify and serve a copy of the order, modification, or extension on the judges and clerks of all courts sitting within the jurisdictions affected and on the clerks of the Georgia Court of Appeals and the Georgia Supreme Court, such service to be accomplished through reasonable means to assure expeditious receipt; and

(3) Give notice of the issuance of the order, modification, or extension to the affected parties, counsel for the affected parties, and the public. Notice shall be provided by whatever means are reasonably calculated to reach the affected parties, counsel for the affected parties, and the public and may, without limitation, include mailing, publication in a newspaper of local or state-wide distribution, posting of written notices at courthouses and other public gathering sites, transmittal by facsimile or e-mail, and announcements on television, radio, and public address systems.

HISTORY: Code 1981, § 38-3-63, enacted by Ga. L. 2004, p. 420, § 3.

O.C.G.A. § 38-3-64. Appeal rights of adversely affected parties; cost of appeal borne by state

(a) Any person whose rights or interests are adversely affected by an order declaring the existence of a judicial emergency or any modification or extension of such an order shall be entitled to appeal.

(b) A notice of appeal shall be filed no later than 45 days after the expiration of the judicial emergency order, or any modification or extension of a judicial emergency order, from which an appeal is sought. A notice of appeal shall be filed with the clerk of a superior court in any jurisdiction affected by the order and shall be served upon:

(1) The authorized judicial official who issued the order;

(2) The parties to any criminal proceeding or civil litigation in which the appellant is involved which would be affected by the appeal;

(3) The district attorney of the county in which the notice of appeal is filed; and

(4) All other parties in any criminal proceeding or civil litigation which would be

affected by the appeal; provided, however, that service in this regard shall be accomplished by publishing notice of the filing of the appeal in the newspaper which is the legal organ for the county in which the notice of the appeal is filed.

(c) The appeal shall be heard immediately by the Georgia Court of Appeals under the procedure of emergency motions. A party dissatisfied by the judgment of the Georgia Court of Appeals may appeal as a matter of right to the Georgia Supreme Court. Filing fees for these appeals shall be waived. All costs of court shall be borne by the state. Appeals shall be heard expeditiously.

HISTORY: Code 1981, § 38-3-64, enacted by Ga. L. 2004, p. 420, § 3.

Appendix C: Emergency Powers of the Governor

O.C.G.A. § 38-3-50. Emergency interim successors to various officials; necessity of declared emergency

(a) As used in this Code section, the term:

(1) "Disaster" means any happening that causes great harm or damage.

(2) "Emergency" means a sudden generally unexpected occurrence or set of circumstances demanding immediate action.

(3) "Emergency interim successor" means a person designated pursuant to this Code section, in the event an officer is unavailable to exercise the powers and discharge the duties of an office, until a successor is appointed or elected and qualified as may be prescribed by the Constitution, statutes, laws, charters, and ordinances of this state and its political subdivisions, or until the lawful incumbent or his successor is able to resume the exercise of the powers and the discharge of the duties of the office.

(4) "Local offices and local officers" means positions in the political subdivisions of the state.

(5) "Office" means the position of head of any and all departments, agencies, boards, or commissions of the state or any of its political subdivisions; all constitutional General Assembly offices; all constitutional and other county offices; all of the judgeships of the state and its political subdivisions; and all of the positions in the legislative departments of the state or its political subdivisions.

(6) "Officer" means the individual who shall hold an office.

(7) "Political subdivisions" means cities, counties, towns, villages, authorities, and any other bodies created by the state and exercising any of the governmental powers of the state.

(8) "State office" and "state officer" mean positions in the government of this state.

(9) "Unavailable" means either that a vacancy in an office exists as the result of any emergency as defined in paragraph (2) of this subsection and there is no deputy or other successor authorized to exercise all of the powers and discharge all of the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(b) All state officers shall within 30 days after taking office, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of office, designate by title individuals as emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this Code section to ensure their current status. The officer will designate a sufficient number of such emergency interim successors so that there will be not less than three nor more than seven deputies or emergency interim successors or any combination thereof at any time. In the event that any state officer is unavailable following an emergency or disaster and in the event his deputy, if any, is also unavailable, the powers of his office shall be exercised and the duties of his office shall be discharged by his designated emergency interim successors in the order specified. The emergency successors shall exercise the powers and discharge the duties only until such time as the Governor under the Constitution or authority other than this Code section, or other official authorized under the Constitution or this Code section to exercise the powers and discharge the duties of the office of Governor, may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed or elected and qualified as provided by law, or until an officer or his deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of his office.

(c) All emergency interim successors designated under this Code section shall have the same qualifications as are prescribed by law for the officer by whom they are designated.

(d) Designations of emergency interim successors to state officers shall become official upon the officer filing a list of the successors with the Secretary of State, who shall inform the Governor, the Georgia Emergency Management Agency, all emergency interim successors to the officer involved, and the judge of the probate court of the county of legal residence of the successors of all such designations and any changes therein. Any designation of an emergency interim successor may be changed or altered by the officer concerned filing a notice of the change or alteration with the Secretary of State.

(e) All constitutional county officers shall within 30 days after taking office, in addition to any deputy authorized pursuant to law to exercise all the powers and discharge the duties of the office, designate by title individuals as emergency interim successors and specify their order of succession. The successors shall have the same powers, duties, and qualifications as specified by subsections (b) and (c) of this Code section for successors to state officers. Designations of the successors shall be made in the same manner as prescribed for successors to state officers in subsection (d) of this Code section.

(f) The legislative bodies of all political subdivisions of the state are authorized and directed to provide by ordinance or resolution for emergency interim successors for the officers of the political subdivisions. The resolutions and ordinances shall not be inconsistent with this Code section.

(g) At the time of their designation, emergency interim successors shall take such oath as

may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

(h) Emergency interim successors shall receive the same compensation as is paid the officer by whom they are appointed. The compensation shall be paid only during such time as a successor shall exercise the powers of the officer by whom he has been designated.

(i) Governmental powers shall be exercised by emergency interim successors appointed under this Code section only during a period of emergency or disaster, as defined by this Code section.

HISTORY: Ga. L. 1958, p. 628, § 1; Ga. L. 1962, p. 469, § 1; Ga. L. 1973, p. 74, § 9; Ga. L. 1992, p. 1258, § 7.

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INTERIM SUCCESSOR TO JUDGE. --Judge could name a person who is not a public official as his interim successor. 1962 Op. Att'y Gen. p. 32.

CLERK OF THE SUPERIOR COURT SHOULD APPOINT A SUCCESSOR even though he already has four or five deputies as the deputy clerk positions as such would terminate when the principal was no longer in office. 1962 Op. Att'y Gen. p. 32.

COUNTY COMMISSIONERS AND OTHER COUNTY OFFICERS have the authority and are directed to designate emergency interim successors for the purpose of continuity of government in the case of an emergency created by an enemy attack. 1965-66 Op. Att'y Gen. No. 66-242.

RESEARCH REFERENCES

ALR. --Effect of declaring an emergency in the enactment of a law without declaring it free from the operation of the referendum, 7 ALR 530.

O.C.G.A. § 38-3-51. Emergency powers of Governor; termination of emergency; limitations in energy emergency; immunity

(a) In the event of actual or impending emergency or disaster of natural or human origin, or impending or actual enemy attack, or a public health emergency, within or affecting this state or against the United States, the Governor may declare that a state of emergency or disaster exists. As a condition precedent to declaring that a state of emergency or disaster exists as a result of a public health emergency, the Governor shall issue a call for a special session of the General Assembly pursuant to Article V, Section II, Paragraph VII of the Constitution of Georgia, which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. The state of emergency or disaster shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with, to the extent that emergency or disaster conditions no longer exist, and terminates the state of emergency or disaster. No state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor. The General Assembly by concurrent resolution may terminate a state of emergency or disaster at any time. Thereupon, the Governor shall by appropriate action end the state of emergency or disaster.

(b) A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to Articles 1 through 3 of this chapter or any other law relating to emergencies or disasters.

(c) The Governor shall have and may exercise for such period as the state of emergency or disaster exists or continues the following additional emergency powers:

(1) To enforce all laws, rules, and regulations relating to emergency management and to assume direct operational control of all civil forces and helpers in the state;

(2) To seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law;

(3) To sell, lend, give, or distribute all or any such property among the inhabitants of the state and to account to the proper agency for any funds received for the property; and

(4) To perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.

(d) In addition to any other emergency powers conferred upon the Governor by law, he may:

(1) Suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(2) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency or disaster;

(3) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(4) Commandeer or utilize any private property if he finds this necessary to cope with the emergency or disaster;

(4.1) Compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. The use of such health care facility may include transferring the management and supervision of the health care facility to the Department of Human Resources for a limited or unlimited period of time not extending beyond the termination of the public health emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; provided, however, that any limitation on firearms under this Code section shall not include an individual firearm owned by a private citizen which was legal and owned by that citizen prior to the declaration of state of emergency or disaster or thereafter acquired in compliance with all applicable laws of this state and the United States; and

(9) Make provision for the availability and use of temporary emergency housing.

(e) When the available funds are not sufficient for the purpose of paying the expenses incident to carrying out the provisions authorized by Articles 1 through 3 of this chapter, the Governor may transfer from any available fund in the state treasury such sum as may be necessary to meet the emergency or disaster; and the moneys so transferred shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

(f) In the event that the Governor proclaims an emergency or disaster, as defined by Articles 1 through 3 of this chapter, to be a catastrophe within the meaning of Article III, Section IX, Paragraph VI(b) of the Constitution of the state, the funds referred to in the paragraph may be utilized by the Governor for the purpose of carrying out the provisions authorized by Articles 1 through 3 of this chapter.

(g) In the event that the Governor proclaims an emergency or disaster, as defined in Articles 1 through 3 of this chapter, the Governor may provide welfare benefits to the citizens of this state in the form of grants to meet disaster related necessary expenses or serious needs of individuals or families adversely affected by an emergency or disaster in those cases where the individuals or families are unable to meet the expenses or needs from other means, provided that such grants are authorized only when matching federal funds are available for such purposes pursuant to the Disaster Relief Act of 1974 (Pub. L. 93-288).

(h) If the Governor declares a state of emergency solely because of an energy emergency, he shall not have the authority to:

(1) Seize, take for temporary use, or condemn property other than energy resources as authorized by paragraph (2) of subsection (c) of this Code section;

(2) Sell, lend, give, or distribute property other than energy resources as authorized by paragraph (3) of subsection (c) of this Code section; or

(3) Commandeer or utilize property other than energy resources as authorized by paragraph (4) of subsection (d) of this Code section.

(i)(1) The Governor may direct the Department of Human Resources to coordinate all matters pertaining to the response of the state to a public health emergency including without limitation:

(A) Planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state;

(B) Coordinating public health emergency responses between state and local authorities;

(C) Collaborating with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;

(D) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;

(E) Organizing public information activities regarding state public health emergency response operations; and

(F) Providing for special identification for public health personnel involved in a public health emergency.

(2) The following due process procedures shall be applicable to any quarantine or vaccination program instituted pursuant to a declaration of a public health emergency:

(A) Consonant with maintenance of appropriate quarantine rules, the department shall permit access to counsel in person or by such other means as practicable that do not threaten the integrity of the quarantine;

(B) An order imposing a quarantine or a vaccination program may be appealed but shall not be stayed during the pendency of the challenge. The burden of proof shall be on the state to demonstrate that there exists a substantial risk of exposing other persons to imminent danger. With respect to vaccination, the state's burden of proof shall be met by clear and convincing evidence. With respect to quarantine, the state's burden of proof shall be met by a preponderance of the evidence;

(C) An individual or a class may challenge the order before any available judge of the state courts, the superior courts, the Court of Appeals, or the Supreme Court. Such judge, upon attestation of the exigency of the circumstances, may proceed ex parte with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties. The judge hearing the matter may consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed to determine the interests of a class or classes. The rules of evidence applicable to civil cases shall be applied to the fullest extent practicable taking into account the circumstances of the emergency. All parties shall have the right to subpoena and cross-examine witnesses, but in enforcement of its subpoena powers the court shall take into account the circumstances of the emergency. All proceedings shall be transcribed to the extent practicable. Filing fees shall be waived and all costs borne by the state;

(D) The judge hearing the matter may enter an appropriate order upholding or suspending the quarantine or vaccination order. With respect to vaccination, the order may be applicable on notice to the department or its agents administering the vaccination, or otherwise in the court's discretion. With respect to quarantines, the order shall be automatically stayed for 48 hours;

(E) The department or any party may appeal any order within 24 hours to the Court of Appeals, the Supreme Court, or to any available judge thereof in the event that circumstances render a full court unavailable. If the trial judge has proceeded ex parte or with counsel appointed for the state, the trial court shall either direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees for appeal shall be waived, all costs shall be borne by the state, and such appeals shall be heard expeditiously; and

(F) No provisions of this paragraph shall be construed to limit or restrict the right of habeas corpus under the laws of the United States.

(j) Any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable to any other individual, partnership, association, or corporation by reason thereof in any action seeking legal or equitable relief.

HISTORY: Ga. L. 1951, p. 224, § 7; Ga. L. 1973, p. 74, § 4; Ga. L. 1974, p. 558, § 1; Ga. L. 1975, p. 1551, § 1; Ga. L. 1977, p. 192, §§ 2, 3; Ga. L. 1981, p. 389, § 2; Ga. L. 1983, p. 3, § 59; Ga. L. 2002, p. 1386, §§ 12, 13, 14, 15.

NOTES:

THE 2002 AMENDMENT, effective May 16, 2002, in subsection (a), in the first sentence, substituted "human origin" for "manmade origin" and inserted "or a public health emergency," and added the second sentence; in subsection (d), added paragraph (d)(4.1), added the proviso at the end of paragraph (d)(8); added subsection (i); and redesignated the former provisions of subsection (i) as present subsection (j).

CROSS REFERENCES. --Governor's power to postpone or extend qualifying periods for election during state of emergency, § 21-2-50.1. For further provisions regarding emergency powers of Governor, see §§ 38-2-6, 38-3-22, 45-12-29 et seq. As to power of Public Service Commission to allocate utility service so as to protect public health, safety, and welfare, see § 46-2-71. Extension of qualifying periods for states of emergency, § 21-2-50.1.

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 2004, "Article V, Section II" was substituted for "Article II, Section V" in subsection (a).

U.S. CODE. --The federal Disaster Relief Act of 1974, referred to in subsection (g) of this section, is codified at 42 U.S.C. § 3231 et seq., and 42 U.S.C. § 5121 et seq.

LAW REVIEWS. --For note on the 2002 amendment of this section, see 19 Ga. St. U.L. Rev. 1 (2002).

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CONSTITUTIONALITY --The provisions of this section authorizing the Governor to make grants to individuals under certain prescribed conditions are not inconsistent with the state Constitution. 1975 Op. Att'y Gen. No. 75-147.

RESEARCH REFERENCES

C.J.S. --81A C.J.S., States, § 205.

ALR. --Recovery of cumulative statutory penalties, 71 ALR2d 986.

O.C.G.A. § 38-3-52. Emergency locations -- State government; proclamation; effect of official acts

(a) Whenever, due to an emergency or disaster resulting from manmade or natural causes or enemy attack, it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the normal location of the seat thereof in Atlanta, Fulton County, the Governor, as often as the exigencies of the situation require, shall by proclamation declare an emergency temporary location or locations for the seat of government at such place or places within or outside this state as he may deem advisable under the circumstances and shall take such action and issue such orders as may be necessary for an orderly transition of the affairs of state government to the emergency temporary location or locations. The emergency temporary location or locations shall remain as the seat of government until the General Assembly shall by law establish a new location or locations or until the emergency or disaster is declared to be ended by the Governor and the seat of government is returned to its normal location.

(b) During such time as the seat of government remains at the emergency temporary location or locations, all official acts required by law to be performed at the seat of government by any officer, agency, department, or authority in this state, including the convening and meeting of the General Assembly, shall be as valid and binding when performed at the emergency temporary location or locations as if performed at the normal location of the seat of government.

HISTORY: Ga. L. 1958, p. 691, § 1; Ga. L. 1962, p. 475, § 1; Ga. L. 1973, p. 74, § 10.

O.C.G.A. § 38-3-53. Emergency locations -- Meeting of General Assembly; call; suspension of constitutional rules

The General Assembly shall meet at the new location provided for in Code Section 38-3-52 either upon the call of the Governor or, if no call is issued, through the initiative of the members thereof following an emergency or disaster resulting from manmade or natural causes or enemy attack impending or affecting this state. At such time the General Assembly shall not be limited by any constitutional provisions relating to length of sessions, and it may suspend the operation of any and all constitutional rules governing the procedure of both the House of Representatives and the Senate as it deems necessary during the period of emergency or disaster.

HISTORY: Ga. L. 1962, p. 473, § 1; Ga. L. 1973, p. 74, § 11.

O.C.G.A. § 38-3-54. Emergency locations -- Local government; who may call meeting; effect of acts

Whenever, due to an emergency or disaster resulting from manmade or natural causes or enemy attack, it becomes imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision, including but not limited to each and every city, county, and municipality of the state, may meet at any place within or outside the territorial limits of the political subdivision on the call of the presiding officer or any two members of the governing body and shall proceed to establish and designate by ordinance, resolution, or other manner alternate or substitute sites or places as the emergency temporary location or locations of government where all or any part of the public business may be transacted and conducted during the emergency or disaster situation. The sites or places may be within or outside the territorial limits of the political subdivision and may be within or outside this state. During the period when the public business is being conducted at the emergency temporary location or locations, the governing body and other officers of a political subdivision of this state shall have and possess and shall exercise at the location or locations all of the executive, legislative, and judicial powers and functions conferred upon such body and officers by or under the laws of this state. The powers and functions may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto, and all acts of the body and officers shall be as valid and binding as if performed within the territorial limits of their political subdivision.

HISTORY: Ga. L. 1962, p. 473, § 1; Ga. L. 1973, p. 74, § 12.

O.C.G.A. § 38-3-55. Emergency locations -- When authorized; proclamation

The provisions of Code Sections 38-3-52 through 38-3-54 shall be operative only in the event and for the duration of an emergency or disaster of manmade or natural causes or enemy attack impending on or affecting this state or the United States, as proclaimed by an appropriate state official.

HISTORY: Ga. L. 1962, p. 473, § 3; Ga. L. 1973, p. 74, § 13.

O.C.G.A. § 38-3-56. Registration of businesses during emergency

Notwithstanding any other provisions of law, the governing authority of any county or municipality may provide by ordinance for a program of emergency registration of all or certain designated classes of businesses doing business in the county or municipality during a state of emergency declared by the Governor. Such ordinance may be implemented for a period during which the state of emergency continues and for a subsequent recovery period of up to three months at the direction of the governing authority. In any county or municipality adopting such an ordinance, no business subject

to the ordinance may do business in the county or municipality without first registering in conformance with the provisions of the ordinance.

HISTORY: Code 1981, § 38-3-56, enacted by Ga. L. 1995, p. 1362, § 3.

NOTES:

EFFECTIVE DATE. --This Code section became effective July 1, 1995.

LAW REVIEWS. --For note on the 1995 enactment of this section, see 12 Ga. St. U.L. Rev. 31 (1995).

O.C.G.A. § 38-3-57. Establishment of standardized, verifiable, performance based unified incident command system; utilization; training; implementation; funding

(a) The Georgia Emergency Management Agency shall establish and maintain, in collaboration with all appropriate state agencies and volunteer organizations with emergency support function roles and professional organizations that represent local public safety agencies, including the Emergency Management Association of Georgia, the Georgia Association of Police Chiefs, the Georgia Fire Chiefs' Association, and the Georgia Sheriffs' Association, a standardized, verifiable, performance based unified incident command system.

(b) Such system shall be consistent with the Georgia Emergency Operations Plan and shall be utilized in response to emergencies and disasters referenced in the Georgia Emergency Operations Plan, including presidentially declared disasters and states of emergency issued by the Governor.

(c) The Georgia Emergency Management Agency, in cooperation with the Georgia Public Safety Training Center and the Georgia Forestry Commission, shall develop or adopt a course of instruction for use in training and certifying emergency response personnel in unified incident command.

(d) All local public safety and emergency response organizations, including emergency management agencies, law enforcement agencies, fire departments, and emergency medical services, shall implement the standardized unified incident command system provided for in subsection (a) of this Code section by October 1, 2004.

(e) Local agencies that have not established such system by October 1, 2004, shall not be eligible for state reimbursement for any response or recovery related expenses.

HISTORY: Code 1981, § 38-3-57, enacted by Ga. L. 2004, p. 743, § 3.

EFFECTIVE DATE. --This Code section became effective July 1, 2004.

CODE COMMISSION NOTES. --Pursuant to Code Section 28-9-5, in 2004, "roles" was substituted for "roles," and "performance based" was substituted for "performance-based" in subsection (a); and "presidentially" was substituted for "Presidentially" in subsection (b).

SECTION 5 APPENDICES

SECTION 5.3 GLOSSARY

A

active tuberculosis

A diagnosis demonstrated by clinical, bacteriologic, or diagnostic imaging evidence or of a combination thereof. Persons who have been diagnosed as having active tuberculosis and have not completed a course of ant tuberculosis treatment are still considered to have active tuberculosis and may be infectious. O.C.G.A. § 31-14-1(a).

administrative search warrant

See “Inspection Warrant”

antigen

A substance that is alien to the body and induces a specific immune response and antibody production when introduced. *A Dictionary of Public Health* (J.M. Last ed., 2007)

B

biohazard

A biological or chemical agent or substance that is harmful or endangers life; this includes pathogenic organisms (i.e., organisms which cause disease). *A Dictionary of Public Health* (J.M. Last ed., 2007).

bioterrorism

(1) "Bioterrorism" means the intentional creation or use of any microorganism, virus, infectious substance, or any component thereof, whether naturally occurring or bioengineered, to cause death, illness, disease, or other biological malfunction in a human, animal, plant, or other living organism in order improperly or illegally to influence the conduct of government, to interfere with or disrupt commerce, or to

state of health. *Stedman's Medical Dictionary* (27th ed. 2000).

E

Emergency

A sudden generally unexpected occurrence or set of occurrences demanding immediate action. O.C.G.A § 38-3-50 (a)(2).

epidemic

An outbreak or rise in incidence rate, or spread of incidence of a contagious or infectious disease so as to constitute a clear and present risk of infection to the public at large or to congregated works thereof. Rules and Regulations Public Health 290-5-4-.01(f).

F

Federal Emergency Management

The Federal agency responsible for managing federal response Agency (FEMA) and recovery efforts following any national incident. FEMA initiates proactive mitigation activities, trains first responders and manages the National Flood Insurance Program. Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L.100-707.

first responder

Individual certified to perform basic life support activities to stabilize and improve a patient's condition, in a pre-hospital setting, until more highly trained emergency medical service personnel arrive at the scene.

G

GEMA

The Georgia Emergency Management Agency, the director of which, subject to the direction and control of the Governor, shall coordinate the activities of all organizations for emergency management within the state, shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and

responsibilities as may be prescribed by the Governor. O.C.G.A. § 38-3-20.

H

hazardous substance

Any element, compound or material which threatens the health of domestic animals or humans.

I

incubation period

The period of time between the entry of a disease agent into an organism and the organism's initial display of symptoms; the disease develops during the incubation period. Incubation periods are disease-specific and range from hours to weeks. *Stedman's Medical Dictionary* (27th ed. 2000).

infectious agent

Any organism, such as a virus, bacterium, fungus or parasite, that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease.

infectious disease

(See communicable disease.)

immunization

The presumptive presence in the body of an immunized person of sufficient protective antibodies, or of cellular immunity as a result of previous infection or introduction of specific antigenic agents, or a presumptive state of being so conditioned by previous experience with a particular disease so as to provide an immediate protective response upon exposure to specific infectious agents of that disease. Rules and Regulations Public Health. 290-5-4-.01(a) (See also "Vaccination")

inspection warrant

A warrant authorizing a search or inspection of private property where such a search or

inspection is one that is necessary for the enforcement of any of the provisions of laws authorizing licensure, inspection, or regulation by the Department of Human Resources or a local agency thereof. O.C.G.A. § 31-5-20.

Isolation

The separation and restriction of movement or activities, for the period of communicability of ill, infected or contaminated persons who have an infectious disease or who are contaminated with a toxin, in such places or in such conditions as to prevent or limit the transmission of the infectious agent or toxin.

L

local emergency

The existence of conditions of extreme peril to the safety of persons and property within the territorial limits of a political subdivision of the state or on a campus of an institution within the University System of Georgia caused by natural disasters, riots, civil disturbances, or other situations presenting major law enforcement and other public safety problems, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision of the state and which require the combined forces of other political subdivisions of the state to combat. O.C.G.A. § 36-69-2

local health authority

Any of the 159 county boards of health or 18 public health districts.

M

modified quarantine

A selected, partial limitation of freedom of movement determined on the basis of differences in susceptibility or danger of disease transmission, which is designed to meet particular situations. Modified quarantine includes, though is not limited to, the exclusion of children from school and the prohibition or the

restriction of those exposed to a communicable disease from engaging in particular occupations.

N

nuisance

A nuisance is anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable man. O.C.G.A. § 41-1-1.

P

pathogen

An organism that causes disease. *A Dictionary of Public earth* (J.M. Last ed., 2007).

points of dispensing (PODs)

Pre-designated locations where antiviral and vaccines are available and distributed to all members of the public within a limited period of time (e.g., 48 hours); PODs are organized for the purpose of preventing the spread of disease and/or a negative effect on the public's health.

political subdivisions

Cities, counties, towns, villages, authorities and any other bodies created by the state and exercising any of the governmental powers of the state. O.C.G.A. § 38-3-50 (a) (7).

public health

“What we, as a society, do to collectively assure the conditions in which people can be healthy.” *The Future of Public Health*, Institute of Medicine, 1988.

public health emergency

"Public health emergency" means the occurrence or reasonably believed to be caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious

agent or biological toxin and poses a high probability of any of the following harms:

(A) A large number of deaths in the affected population;

(B) A large number of serious or long-term disabilities in the affected population; or

(C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population. O.C.G.A. § 31-12-1.1.

public health district

Created by the Department of Human Resources with the more county boards of health. If comprised of more than one county, one county is designated the “lead” county and the director of the county health department for the lead county is designated “district director.” Georgia currently has 18 public health districts.

Q
Quarantine

The separation and restriction of movement or activities of persons or animals who are not ill but who are believed to have been exposed to infection to prevent transmission during the incubation or early symptomatic period if infection should occur.

R
reportable disease

Any of certain diseases, injuries, and conditions requiring notice and the reporting thereof to the county board of health and the department in a manner and at such times as may be prescribed and all known or presumptively diagnosed cases of persons harboring any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and

highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency. Reportable illnesses and conditions include, without limitation, diseases caused by biological agents listed at 42 C.F.R. Part 72, app. A (2000) and any illnesses or conditions identified by the department as potential causes of a public health emergency. O.C.G.A § 31-12-2 (b).

S

sexually transmitted disease

Approximately 25 miscellaneous diseases with a variety of causal agents, having in common the fact that all are transmitted from person to person by direct contact and that the responsible pathogen usually resides in the genital tract and/or in blood and other body fluids. *A Dictionary of Public Health* (J.M. Lasted., 2007).

state of emergency

The condition declared by the Governor when, in his judgment, the threat or actual occurrence of a disaster, emergency, or energy emergency in any part of the state is of sufficient severity and magnitude to warrant extraordinary assistance by the state to supplement the efforts and available resources of the several localities and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby. O.C.G.A. §38-3-3 (7).

T

tuberculosis

A disease caused by infection with the bacterium, *Mycobacterium tuberculosis*, which can affect almost any tissue or organ of the body - most commonly, the lungs. Primary tuberculosis is typically a mild or asymptomatic local lung infection that, in otherwise healthy people, does not lead to generalized disease because an immune response arrests the spread of the bacteria and walls off the zone of infection.

Stedman's Medical Dictionary (27th ed. 2000).
(See also active tuberculosis).

V

vaccination

Means of preventing the spread of communicable disease by the introduction of specific antigenic agents so as to provide an immediate protective response upon exposure to specific infectious agents of that disease. (See also immunization).

venereal disease

(See sexually transmitted disease.)