

House Bill 1347

By: Representatives Manning of the 32nd, Sinkfield of the 50th, Gardner of the 42nd, Post 3, Buckner of the 82nd, Henson of the 55th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to
2 programs and protection for children and youth, so as to provide that a child welfare agency
3 shall obtain for every applicant for employment a preliminary criminal records check from
4 the Georgia Crime Information Center through a local law enforcement authority; to define
5 certain terms; to provide that an individual with a criminal record which includes certain
6 crimes shall be prohibited permanently from employment in, service on behalf of, or
7 residence in a child welfare agency or for a minimum of ten years from the date of final
8 disposition of the crime, depending on the type of crime involved; to provide for a review
9 of an unsatisfactory criminal records determination; to provide for protection from liability;
10 to provide for penalties for failure to obtain a satisfactory criminal records check of an
11 applicant for employment by a child welfare agency; to provide for access to records of
12 criminal records checks; to provide for related matters; to repeal conflicting laws; and for
13 other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to programs and
17 protection for children and youth, is amended by striking Article 3, relating to employees'
18 records checks for day-care centers, and inserting in its place the following:

19 "ARTICLE 3

20 49-5-60.

21 As used in this article, the term:

22 (1) 'Child welfare agency' or 'agency' means any child-caring institution, child-placing
23 agency, maternity home, family day-care home, group day-care home, or day-care center
24 required to be licensed, commissioned, or registered by the department.

- 1 (2) 'Covered crime' means a crime included in the list of crimes specified by Code
2 Section 49-5-61 that results in either a permanent or time limited exclusion of an
3 individual from employment in, service on behalf of, or residence in a child welfare
4 agency or a home utilized by the agency.
- 5 (3) 'Criminal record' means:
- 6 (A) Conviction of a covered crime;
- 7 (B) Arrest, charge, and sentencing for a covered crime where:
- 8 (i) A plea of nolo contendere was entered to the covered crime;
- 9 (ii) First offender treatment without adjudication of guilt pursuant to the covered
10 crime was granted; or
- 11 (iii) Adjudication or sentence was otherwise withheld or not entered on the covered
12 crime; or
- 13 (C) Arrest and charge for a covered crime if the charge is pending, unless the time for
14 prosecuting such crime has expired pursuant to Chapter 3 of Title 17.
- 15 (4) 'Department' means the Department of Human Resources.
- 16 (5) 'Director' means the chief administrative or executive officer of a child welfare
17 agency.
- 18 (6) 'Employee' means any person, other than a director, employed by a child welfare
19 agency or utilized by a child welfare agency to perform any duties on behalf of such
20 agency which involve personal contact between that person and any child being cared for
21 by such agency, and also includes any adult living in an agency or home being utilized
22 by such agency and any adult who, with or without compensation, performs duties for
23 such agency or home being utilized by such agency which involve personal contact
24 between that adult and any child being cared for on behalf of such child welfare agency.
- 25 (7) 'Fingerprint records check' means an application with two sets of classifiable
26 fingerprints submitted by an applicant for employment, either as a director or an
27 employee of the child welfare agency, for a fingerprint records search to be conducted
28 by the Georgia Bureau of Investigation and the Federal Bureau of Investigation on forms
29 provided by the department or obtained through a local law enforcement agency together
30 with the applicable records search fee.
- 31 (8) 'GCIC' means the Georgia Crime Information Center established under Article 2 of
32 Chapter 3 of Title 35.
- 33 (9) 'License' means the permit or document issued by the department to authorize the
34 facility to which it is issued to operate as a child welfare agency.
- 35 (10) 'Preliminary criminal records check' means the criminal history information
36 available through inquiry of the GCIC which inquiry is based solely on a comparison of
37 identifying information, other than fingerprints, including a photo identification, provided

1 by a prospective employee or director on an application form acceptable to the local law
2 enforcement agencies.

3 (11) 'Satisfactory criminal record' means a written determination that a prospective
4 director or employee upon whom the applicable criminal records checks were performed
5 either does not have a criminal record or has completed the applicable exclusion period,
6 if any, for a covered crime.

7 49-5-61.

8 (a) Any individual having a criminal record involving one or more of the following
9 covered crimes shall be prohibited from employment in, service on behalf of, or residence
10 in a child welfare agency or home used by an agency for a minimum of ten years from the
11 date of final disposition of the crime:

12 (1) A felony violation of Code Section 16-4-1, relating to criminal attempt as it concerns
13 murder;

14 (2) A felony violation of Code Section 16-6-10, relating to keeping a place of
15 prostitution;

16 (3) A felony violation of Code Section 16-6-11, relating to pimping;

17 (4) A felony violation of Code Section 16-6-12, relating to pandering;

18 (5) A felony violation of Code Section 16-8-2, relating to theft by taking;

19 (6) A felony violation of Code Section 16-8-3, relating to theft by deception;

20 (7) A felony violation of Code Section 16-8-4, relating to theft by conversion;

21 (8) A felony violation of Code Section 16-8-40, relating to robbery;

22 (9) A felony violation of Code Section 16-9-1, relating to forgery in the first degree;

23 (10) A felony violation of Code Section 16-9-2, relating to forgery in the second degree;

24 (11) A felony violation of Chapter 13 of Title 16, relating to controlled substances; and

25 (12) Any other offense committed in another jurisdiction that, if committed in this state,
26 would be deemed to be a crime listed in this subsection, without regard to its designation
27 elsewhere.

28 (b) Any individual having a criminal record involving one or more of the following
29 covered crimes shall be permanently prohibited from employment in, service on behalf of,
30 or residence in a child welfare agency or a home used by an agency:

31 (1) A violation of Code Section 16-5-1, relating to murder and felony murder;

32 (2) A violation of Code Section 16-5-21, relating to aggravated assault;

33 (3) A violation of Code Section 16-5-23.1, relating to battery;

34 (4) A violation of Code Section 16-5-24, relating to aggravated battery;

35 (5) A violation of Code Section 16-5-70, relating to cruelty to children;

- 1 (6) A violation of Code Section 16-6-1, relating to rape;
- 2 (7) A violation of Code Section 16-6-2, relating to aggravated sodomy;
- 3 (8) A violation of Code Section 16-6-4, relating to child molestation;
- 4 (9) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;
- 5 (10) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in
- 6 custody, detained persons, or patients in hospitals or other institutions;
- 7 (11) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;
- 8 (12) A violation of Code Section 16-8-41, relating to armed robbery;
- 9 (13) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a
- 10 disabled adult or elder person; and
- 11 (14) Any other offense committed in another jurisdiction that, if committed in this state,
- 12 would be deemed to be a crime listed in this subsection, without regard to its designation
- 13 elsewhere.

14 49-5-62.

15 (a) Prior to hiring an applicant for a director or an employee position, a child welfare
16 agency shall request a preliminary criminal records check from GCIC by application
17 through local law enforcement authorities to determine whether the applicant has a criminal
18 record. The child welfare agency shall review the results of the preliminary criminal
19 records check and make a determination as to whether the applicant has a satisfactory
20 criminal record. A child welfare agency shall not hire a director or employee who has an
21 unsatisfactory criminal record as determined by the agency after a review of the
22 preliminary criminal records check and other court records provided by the applicant.

23 (b) Any request for a preliminary criminal records check under this Code section shall be
24 submitted on a form approved by the GCIC to any local law enforcement agency having
25 access to GCIC information together with a copy of a picture identification of the applicant.
26 Any fee charged by the law enforcement agency for processing such request shall be no
27 greater than the actual cost of such processing. The law enforcement agency receiving
28 such request shall perform the preliminary criminal records check for the child welfare
29 agency within a reasonable time but not more than three days after receiving such request.

30 (c) Each application form provided to an applicant for employment by a child welfare
31 agency shall include the following statement conspicuously placed on the form: 'FOR
32 THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORDS
33 CHECK AS A CONDITION OF EMPLOYMENT.'

34 (d) When the results of a preliminary criminal records check are inconclusive due to a
35 finding that the subject of such preliminary criminal records check has a multistate offender
36 status, a child welfare agency shall not hire such individual until the child welfare agency

1 has conclusively determined that such individual has not committed a crime in another state
2 which is equivalent to the covered crimes specified in Code Section 49-5-61. To assist a
3 child welfare agency in making such determination, the child welfare agency shall submit
4 to the department a request for a fingerprint records check on behalf of such individual
5 together with any applicable fees.

6 (e) Prior to hiring any director, a child welfare agency shall also require an applicant to
7 submit a fingerprint records check to the department, either directly or through a local law
8 enforcement agency, for processing through the GCIC and the Federal Bureau of
9 Investigation together with any applicable fees; provided, however, such requirement shall
10 not apply to an applicant who has provided any agency with evidence of the results of a
11 satisfactory fingerprint records check within the previous 12 months.

12 (f) When the department has reason to believe that either a preliminary criminal records
13 check or a fingerprint records check has been tampered with or that a director or an
14 employee has acquired a criminal record, the department is authorized to perform a
15 preliminary criminal records check on such director or employee through the GCIC and
16 require such director or employee to submit a fingerprint records check application to the
17 department, either directly or through local law enforcement, with required fees, for
18 processing through the GCIC and the Federal Bureau of Investigation. The department
19 shall collect all fees required for processing such fingerprints from the child welfare agency
20 that has employed such director or employee.

21 (g) When a child welfare agency becomes aware that a director or an employee has a
22 criminal record, the child welfare agency shall immediately remove such director or
23 employee from such position with the child welfare agency and any further contact with
24 any child being cared for on behalf of the child welfare agency.

25 (h) In addition to the criminal records checks required by this article, a child welfare
26 agency shall conduct, prior to hiring an applicant for a director or employee position, an
27 inquiry with the Georgia Nurse Aide Registry to determine whether such applicant has
28 been found to have abused or neglected a nursing home resident or misappropriated the
29 property of a nursing home resident. A child welfare agency shall not hire a director or an
30 employee who has been found guilty of such abuse, neglect, or misappropriation. The
31 results of such inquiry shall be maintained in the child welfare agency's file for such
32 director or employee and shall be made available to the department, upon request, for
33 inspection and copying. When a child welfare agency finds subsequent to hiring a director
34 or employee that such director or employee has been found to have abused or neglected a
35 nursing home resident or misappropriated the property of a nursing home resident, the child
36 welfare agency shall immediately remove the director or employee from his or her position
37 with such agency and any further contact with the children in care.

1 (i) When an applicant for employment with an agency has previously appealed an
2 unsatisfactory determination and has been determined by an administrative law judge to
3 be eligible to work in an agency, such applicant shall be determined to have a satisfactory
4 criminal record under the current law, provided that such applicant has no criminal record
5 of covered crimes since the determination by the administrative law judge and such
6 applicant has not abused, neglected, or misappropriated the property of a nursing home
7 resident.

8 49-5-63.

9 (a) No child welfare agency operating as a licensed child-placing agency, as defined in this
10 chapter, shall place a child in a foster care or adoptive home before the agency has
11 obtained a satisfactory preliminary criminal records check of the potential foster or
12 adoptive parent or parents through a local law enforcement agency and submitted a
13 fingerprint records check application to the department, either directly or through a local
14 law enforcement agency, together with all fees required for processing the application.
15 When the results of a preliminary criminal records check reflect multistate offender status,
16 an agency shall not place a child in a home before the agency has received a satisfactory
17 fingerprint records check determination utilizing the procedure set forth in subsection (d)
18 of Code Section 49-5-62.

19 (b) No licensed child-placing agency shall continue the placement of a child in the care of
20 a foster or adoptive parent or parents after having obtained an unsatisfactory fingerprint
21 records check determination of the foster or adoptive parent or parents.

22 49-5-64.

23 The department is authorized to receive fingerprint records check applications from any
24 individual required to submit fingerprints under this article together with any required fees
25 and to process such fingerprints through the GCIC and the Federal Bureau of Investigation,
26 either directly or through a local law enforcement agency. The department is further
27 authorized to receive and use the results of such fingerprint records checks from the GCIC
28 and the Federal Bureau of Investigation to determine whether an individual has a criminal
29 record as defined in this article. The department shall notify all agencies and individuals
30 who have submitted fingerprints of the results of such fingerprint records check. When an
31 agency is notified that a director or an employee has an unsatisfactory criminal record, the
32 agency shall immediately remove the director or employee from such position with the
33 child welfare agency and any further contact with any child being cared for on behalf of
34 the child welfare agency. The department is further authorized to disclose to the individual

1 who is the subject of a fingerprint records check the specific covered crimes which were
2 included in the individual's unsatisfactory fingerprint records check.

3 49-5-65.

4 An individual may file with the department a request for a review of the department's
5 determination that a preliminary criminal records check or a fingerprint records check is
6 unsatisfactory and shall include with such request court records and any other applicable
7 evidence that the individual believes establishes that he or she does not have a criminal
8 record. If, after reviewing all of the evidence submitted, the department issues a final
9 written notice upholding the unsatisfactory determination, the individual may file an
10 application for review thereof by appeal to the superior court in the county in which the
11 action arose or to the Superior Court of Fulton County pursuant to Code Section 31-5-3.

12 49-5-66.

13 (a) Neither the GCIC nor any law enforcement agency nor the department providing GCIC
14 information pursuant to this article shall be responsible for the accuracy of the information
15 or have any liability for defamation, invasion of privacy, negligence, or any other claim in
16 connection with any dissemination of information or any determination based thereon
17 pursuant to this article.

18 (b) A child welfare agency, its director, and its employees shall have no liability for
19 wrongful discharge, unemployment security benefits, or any other claim based upon:

- 20 (1) Refusal to employ any individual with a criminal record;
21 (2) Termination of employment of any individual having a criminal record and currently
22 employed by the child welfare agency or utilized by the child welfare agency; or
23 (3) Any other action taken based upon a good faith reliance upon GCIC information
24 received pursuant to this article.

25 49-5-67.

26 (a) A child welfare agency that hires an applicant as a director or employee without
27 obtaining a satisfactory criminal records check as required under this article may be liable
28 for a civil monetary penalty imposed by the department in the amount of \$500.00 for each
29 day that the agency fails to obtain the required records check or \$2,500.00, whichever is
30 less. In addition, the department may impose any licensure sanction authorized pursuant
31 to Code Section 31-2-6 and the department rules and regulations related to licensing
32 enforcement.

33 (b) A child welfare agency shall retain in its files satisfactory evidence of all records
34 checks required under this article, including preliminary criminal records checks,

1 determinations, fingerprint records checks, and other documentation relating to the records
2 checks on all directors and employees hired by an agency and make such evidence
3 available to the department as may be required to determine an agency's compliance with
4 this article.

5 (c) The department shall deny any application for licensure of a child welfare agency upon
6 the refusal of an applicant to submit the criminal records checks required by this article.

7 (d) The imposition of a civil monetary penalty, the denial of a license, and the revocation
8 of a license under this article shall be contested cases for purposes of Chapter 13 of Title
9 50, the 'Georgia Administrative Procedure Act.'

10 49-5-68.

11 The requirements of this article are supplemental to any requirements for a license imposed
12 by Article 1 of this chapter. The department is authorized to promulgate rules and
13 regulations for the administration of this article."

14 **SECTION 2.**

15 All laws and parts of laws in conflict with this Act are repealed.