

House Bill 1020

By: Representatives Golick of the 34th and Ralston of the 7th

A BILL TO BE ENTITLED
AN ACT

1 To restrict access to certain sexually explicit or obscene property or material which is
2 evidence in civil and criminal cases involving minors; to amend Chapter 16 of Title 17 of the
3 Official Code of Georgia Annotated, relating to discovery in felony cases; to amend Chapter
4 18 of Title 50, relating to open records; to provide for controlled access to such property or
5 materials; to provide for penalties; to provide for other matters relative to the foregoing; to
6 provide for an effective date; to repeal conflicting laws; and for other purposes.

7 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

8 **SECTION 1.**

9 Article 1 of Chapter 16 of Title 17 of the Official Code of Georgia Annotated, relating to
10 discovery in felony cases is amended by inserting after Code section 17-16-10 a new Code
11 section 17-16-11 as follows:

12 "17-16-11.

13 (a)(1) Notwithstanding the provisions of paragraph (3) of subsection (a) of this Code
14 section, any property or material that is prohibited by Code Sections 16-12-100,
15 16-12-100.1 or 16-12-100.2, or any other similar such law of this state or of the United
16 States, shall remain in the possession, custody, and control of a law enforcement agency,
17 prosecuting attorney's office or the court.

18 (2) Notwithstanding any other provision of this Chapter or any other provision of law,
19 a court shall deny, in any criminal proceeding, any request by the defendant to copy,
20 photograph, duplicate, or otherwise reproduce any property or material that is prohibited
21 by Code Sections 16-12-100, 16-12-100.1 or 16-12-100.2, so long as the prosecuting
22 attorney makes the property or material reasonably available to the defendant.

23 (3) For the purposes of subparagraph (1) of this subsection, such property or material
24 shall be deemed to be reasonably available to the defendant if the prosecuting attorney
25 provides ample opportunity for inspection, viewing, and examination of the property or
26 material by the defendant, his or her attorney, and any individual the defendant may seek

1 to qualify to furnish expert testimony at trial, at the prosecuting attorney's office or a law
2 enforcement facility.

3 (b)(1) Notwithstanding any other provisions of Titles 9, 24 or Chapter 13 of Title 50, or
4 any other provision of law providing for the discovery or production of evidence in any
5 civil or administrative proceeding, any property or material that is prohibited by Code
6 Sections 16-12-100, 16-12-100.1 or 16-12-100.2, or any other similar such law of this
7 state or of the United States, shall remain in the possession, custody, and control of a law
8 enforcement agency, prosecuting attorney's office or the court having jurisdiction over
9 the violation of such Code Sections. In any civil or administrative proceeding in which
10 one or more of the parties seeks discovery or production of such property or material,
11 such property or material shall not be subject to discovery or production unless the court
12 or hearing officer, after notice and hearing, finds, in writing, that such property or
13 material is material, necessary and relevant evidence in such proceeding and issues an
14 order to the prosecuting attorney having jurisdiction over such property or material to
15 make such property or material reasonably available to the parties.

16 (2) For the purposes of subparagraph (1) of this subsection, such property or material
17 shall be deemed to be reasonably available to the party seeking such property or material
18 if the prosecuting attorney provides an opportunity, during normal business hours for
19 inspection, viewing, and examination of the property or material by the parties to such
20 action or proceeding, their attorneys, and any individuals the parties may seek to qualify
21 to furnish expert testimony at trial, at the prosecuting attorney's office or a law
22 enforcement facility.

23 (3) In any civil or administrative proceeding in which it is determined by the court or
24 hearing officer that such material or property is material, necessary and relevant evidence,
25 the court or hearing officer, shall, after notice and hearing, clear the courtroom of any
26 person, other than those necessary to the action or proceeding, during the presentation of
27 such evidence as provided in Code section 9-10-3.

28 (4) The prosecuting attorney having jurisdiction to prosecute a violation of Code
29 Sections 16-12-100, 16-12-100.1 or 16-12-100.2 shall be authorized to seek a protective
30 order in any civil or administrative proceeding in which such any property or material
31 that is prohibited by Code Sections 16-12-100, 16-12-100.1 or 16-12-100.2, or any other
32 similar such law of this state or of the United States, is sought to be produced.
33 Notwithstanding any other provision of law, such prosecuting attorney shall be authorized
34 to appeal from any decision, order or decree entered pursuant to this Code section as
35 provided by subsection (a) of Code section 5-6-34."

SECTION 2.

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2 Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to
3 inspection of public records is amended by inserting after subsection (c) of Code Section
4 50-18-71.1, relating to approval of judge required for inspection of trial exhibits, a new
5 subsection (d) to read as follows:

6 "(d) Notwithstanding any other provision of this Chapter or any other provision of law, any
7 property or material that is prohibited by Code Section 16-12-100, 16-12-100.1 or
8 16-12-100.2, or any other similar such law of this state or of the United States which is in
9 the possession, custody or control of any public office or agency, including but not limited
10 to, property or material introduced as evidence in a criminal or civil trial, shall not be open
11 to public inspection except as provided in subsection (a) of this Code section. If the judge
12 approves inspection of such property or material, the judge shall designate, in writing, the
13 location where such property or material may be inspected, which location must be in a
14 facility owned or operated by an agency of state or local government. If the judge permits
15 inspection, such property or material shall not be photographed, copied or reproduced by
16 any means. Any person who photographs, copies, reproduces or distributes property or
17 material the inspection of which a judge has authorized in accordance with this subsection
18 shall be guilty of a violation of Code Section 16-12-100."

SECTION 3.

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20 This Act shall be effective upon the first day of the month following its approval by the
21 Governor or its becoming law without the approval of the Governor.

SECTION 4.

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