

Senate Bill 79

By: Senators Harp of the 29th, Unterman of the 45th, Williams of the 19th, Hamrick of the 30th, Adelman of the 42nd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated,
2 relating to child abuse and deprivation records, so as to define a certain term; to provide for
3 access by certain governmental entities and certain persons to records concerning reports of
4 child abuse; to provide that certain records relating to a child fatality or near fatality shall not
5 be confidential; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to child
9 abuse and deprivation records, is amended by revising subsection (a) of Code Section
10 49-5-40, relating to definitions, confidentiality of records, and restricted access to records,
11 as follows:

12 "(a) As used in this article, the term:

13 (1) 'Abused' means subjected to child abuse.

14 (2) 'Child' means any person under 18 years of age.

15 (3) 'Child abuse' means:

16 (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by
17 other than accidental means; provided, however, that physical forms of discipline may
18 be used as long as there is no physical injury to the child;

19 (B) Neglect or exploitation of a child by a parent or caretaker thereof;

20 (C) Sexual abuse of a child; or

21 (D) Sexual exploitation of a child; ~~or,~~

22 ~~(E)~~ However, no child who in good faith is being treated solely by spiritual means
23 through prayer in accordance with the tenets and practices of a recognized church or
24 religious denomination by a duly accredited practitioner thereof shall, for that reason
25 alone, be considered to be an 'abused' child.

26 (4) 'Near fatality' means an act that places a child in serious or critical condition as
 27 certified by a physician.

28 (5) (3.1) 'Sexual abuse' means a person's employing, using, persuading, inducing,
 29 enticing, or coercing any minor who is not that person's spouse to engage in any act
 30 which involves:

31 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
 32 oral-anal, whether between persons of the same or opposite sex;

33 (B) Bestiality;

34 (C) Masturbation;

35 (D) Lewd exhibition of the genitals or pubic area of any person;

36 (E) Flagellation or torture by or upon a person who is nude;

37 (F) Condition of being fettered, bound, or otherwise physically restrained on the part
 38 of a person who is nude;

39 (G) Physical contact in an act of apparent sexual stimulation or gratification with any
 40 person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed
 41 or unclothed breasts;

42 (H) Defecation or urination for the purpose of sexual stimulation; or

43 (I) Penetration of the vagina or rectum by any object except when done as part of a
 44 recognized medical procedure.

45 'Sexual abuse' shall not include consensual sex acts involving persons of the opposite sex
 46 when the sex acts are between minors or between a minor and an adult who is not more
 47 than five years older than the minor. This provision shall not be deemed or construed to
 48 repeal any law concerning the age or capacity to consent.

49 (6)(4) 'Sexual exploitation' means conduct by a child's parent or caretaker who allows,
 50 permits, encourages, or requires that child to engage in:

51 (A) Prostitution, as defined in Code Section 16-6-9; or

52 (B) Sexually explicit conduct for the purpose of producing any visual or print medium
 53 depicting such conduct, as defined in Code Section 16-12-100."

54 **SECTION 2.**

55 Said article is further amended by revising subsection (a) of Code Section 49-5-41, relating
 56 to persons and agencies permitted access to records, as follows:

57 "(a) Notwithstanding Code Section 49-5-40, the following persons or agencies shall have
 58 reasonable access to such records concerning reports of child abuse:

59 (1) ~~A legally mandated, public or private, child protective agency of this state or any~~
 60 ~~other state bound by similar confidentiality provisions and requirements which is~~
 61 ~~investigating a report of known or suspected child abuse or treating a child or family~~

62 ~~which is the subject of a report or record~~ Any federal, state, or local governmental entity,
63 or any agency of any such entity, that has a need for information contained in such
64 reports in order to carry out its legal responsibilities to protect children from abuse and
65 neglect;

66 (2) A court, by subpoena, upon its finding that access to such records may be necessary
67 for determination of an issue before such court; provided, however, that the court shall
68 examine such record in camera, unless the court determines that public disclosure of the
69 information contained therein is necessary for the resolution of an issue then before it and
70 the record is otherwise admissible under the rules of evidence;

71 (3) A grand jury by subpoena upon its determination that access to such records is
72 necessary in the conduct of its official business;

73 (4) A district attorney of any judicial circuit in this state or any assistant district attorney
74 who may seek such access in connection with official duty;

75 (5) Any adult who makes a report of suspected child abuse as required by Code Section
76 19-7-5, but such access shall include only notification regarding the child concerning
77 whom the report was made, shall disclose only whether the investigation by the
78 department or governmental child protective agency of the reported abuse is ongoing or
79 completed and, if completed, whether child abuse was confirmed or unconfirmed, and
80 shall only be disclosed if requested by the person making the report;

81 (6) Any adult requesting information regarding investigations by the department or a
82 governmental child protective agency regarding a ~~deceased child when such person~~
83 ~~specifies the identity of the child~~ fatalities or near fatalities unless such disclosure of
84 information would jeopardize a criminal investigation or proceeding, but such access
85 shall be limited to a disclosure regarding whether there is such an ongoing or completed
86 investigation of such ~~death~~ fatalities or near fatalities and, if completed, whether child abuse
87 was confirmed or unconfirmed;

88 (7) The State Personnel Board, by administrative subpoena, upon a finding by an
89 administrative law judge appointed by the chief state administrative law judge pursuant
90 to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for
91 a determination of an issue involving departmental personnel and that issue involves the
92 conduct of such personnel in child related employment activities, provided that only those
93 parts of the record relevant to the child related employment activities shall be disclosed.
94 The name of any complainant or client shall not be identified or entered into the record;

95 (7.1) A child advocacy center which is certified by the Child Abuse Protocol Committee
96 of the county where the principal office of the center is located as participating in the
97 Georgia Network of Children's Advocacy Centers or a similar accreditation organization
98 and which is operated for the purpose of investigation of known or suspected child abuse

99 and treatment of a child or a family which is the subject of a report of abuse, and which
 100 has been created and supported through one or more intracommunity compacts between
 101 such advocacy center and one or more police agencies, the office of the district attorney,
 102 a legally mandated public or private child protective agency, a mental health board, and
 103 a community health service board; provided, however, that any child advocacy center
 104 which is granted access to records concerning reports of child abuse shall be subject to
 105 the confidentiality provisions of subsection (b) of Code Section 49-5-40 and shall be
 106 subject to the penalties imposed by Code Section 49-5-44 for authorizing or permitting
 107 unauthorized access to or use of such records;

108 (8) Police or any other law enforcement agency of this state or any other state or any
 109 medical examiner or coroner investigating a report of known or suspected abuse or any
 110 child fatality review panel or child abuse protocol committee or subcommittee thereof
 111 created pursuant to Chapter 15 of Title 19, it being found by the General Assembly that
 112 the disclosure of such information is necessary in order for such entities to carry out their
 113 legal responsibilities to protect children from abuse and neglect, which protective actions
 114 include bringing criminal actions for such abuse or neglect, and that such disclosure is
 115 therefore permissible and encouraged under the 1992 amendments to Section 107(b)(4)
 116 of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4); and
 117 (9) The Governor, the Attorney General, the Lieutenant Governor, or the Speaker of the
 118 House of Representatives when such officer makes a written request to the commissioner
 119 of the department which specifies the name of the child for which such access is sought
 120 and which describes such officer's need to have access to such records in order to
 121 determine whether the laws of this state are being complied with to protect children from
 122 abuse and neglect and whether such laws need to be changed to enhance such protection,
 123 for which purposes the General Assembly finds such disclosure is permissible and
 124 encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse
 125 Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4)."

126 **SECTION 3.**

127 Said article is further amended by revising subsection (e) of Code Section 49-5-41, relating
 128 to persons and agencies permitted access to records, as follows:

129 "(e) Notwithstanding any other provisions of law, with the exception of medical and
 130 mental health records made confidential by other provisions of law, child abuse and
 131 deprivation records applicable to a child who at the time of his or her ~~death~~ fatality or near
 132 fatality was:

- 133 (1) In the custody of a state department or agency or foster parent;
 134 (2) A child as defined in paragraph (3) of Code Section 15-11-171; or

135 (3) The subject of an investigation, report, referral, or complaint under Code Section
136 15-11-173
137 shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating
138 to open records. Upon the release of documents pursuant to this subsection, the department
139 may comment publicly on the case."

140 **SECTION 4.**

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