

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

AS PASSED SENATE

**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~~ the findings or
83 information about the case of child abuse or neglect that results in a child fatality or near
84 fatality ~~when such person specifies the identity of the child,~~ unless such disclosure of
85 information would jeopardize a criminal investigation or proceeding, but such access
86 shall be limited to a disclosure ~~regarding whether there is such an ongoing or completed~~
87 ~~investigation of such death and, if completed, whether child abuse was confirmed or~~
88 ~~unconfirmed~~ of the available facts and findings. Any identifying information, including
89 but not limited to the child or caretaker's name, race, ethnicity, address, or telephone
90 numbers and any other information that is privileged or confidential, shall be redacted to
91 preserve the confidentiality of the child, other children in the household, and the child's
92 parents, guardians, custodians, or caretakers.

93 (7) The State Personnel Board, by administrative subpoena, upon a finding by an
94 administrative law judge appointed by the chief state administrative law judge pursuant
95 to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for
96 a determination of an issue involving departmental personnel and that issue involves the
97 conduct of such personnel in child related employment activities, provided that only those

98 parts of the record relevant to the child related employment activities shall be disclosed.
99 The name of any complainant or client shall not be identified or entered into the record;
100 (7.1) A child advocacy center which is certified by the Child Abuse Protocol Committee
101 of the county where the principal office of the center is located as participating in the
102 Georgia Network of Children's Advocacy Centers or a similar accreditation organization
103 and which is operated for the purpose of investigation of known or suspected child abuse
104 and treatment of a child or a family which is the subject of a report of abuse, and which
105 has been created and supported through one or more intracommunity compacts between
106 such advocacy center and one or more police agencies, the office of the district attorney,
107 a legally mandated public or private child protective agency, a mental health board, and
108 a community health service board; provided, however, that any child advocacy center
109 which is granted access to records concerning reports of child abuse shall be subject to
110 the confidentiality provisions of subsection (b) of Code Section 49-5-40 and shall be
111 subject to the penalties imposed by Code Section 49-5-44 for authorizing or permitting
112 unauthorized access to or use of such records;

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

131 **SECTION 3.**

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

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

138 (1) In the custody of a state department or agency or foster parent;

139 (2) A child as defined in paragraph (3) of Code Section 15-11-171; or

140 (3) The subject of an investigation, report, referral, or complaint under Code Section
141 15-11-173

142 shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating
143 to open records; provided, however, that any identifying information, including but not
144 limited to the child or caretaker's name, race, ethnicity, address, or telephone numbers and
145 any other information that is privileged or confidential, shall be redacted to preserve the
146 confidentiality of the child, other children in the household, and the child's parents,
147 guardians, custodians, or caretakers. Upon the release of documents pursuant to this
148 subsection, the department may comment publicly on the case."

149 **SECTION 4.**

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