

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**

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.