

HOUSE SUBSTITUTE TO SENATE BILL 365

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 6 of Chapter 11 of Title 15, Article 3A of Chapter 5 of Title 40, Chapter
 2 2 of Title 42, and Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating
 3 to delinquency proceedings in juvenile court, suspension of driver's license for certain drug
 4 offenses, the Board and Department of Corrections, and general tort provisions, respectively,
 5 so as to enact offender reentry reforms as recommended by the Georgia Council on Criminal
 6 Justice Reform; to change provisions relating to findings in a disposition hearing; to change
 7 provisions relating to calculating time when a child is delinquent and dependent; to change
 8 provisions relating to periodic review hearings for children in foster care; to provide for
 9 permanency planning for children by the Department of Juvenile Justice; to provide for court
 10 hearings regarding the Department of Juvenile Justice's permanency planning for children;
 11 to provide for restoration or suspension of a defendant's driver's license or issuance of a
 12 limited driving permit under certain circumstances; to provide for a Program and Treatment
 13 Completion Certificate that may be issued by the Board of Corrections under certain
 14 circumstances; to change provisions relating to educational programs for adult offenders; to
 15 provide a rebuttable presumption of due care under certain circumstances when a Program
 16 and Treatment Completion Certificate has been issued by the Department of Corrections; to
 17 retain sovereign immunity of the state; to amend Article 11 of Chapter 11 of Title 15,
 18 Chapter 15 of Title 19, and Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia
 19 Annotated, relating to the "Georgia Child Advocate for the Protection of Children Act," child
 20 abuse, and general provisions for the Georgia Bureau of Investigation, respectively, so as to
 21 move the responsibility of coordinating and supervising the work of the Georgia Child
 22 Fatality Review Panel from the Child Advocate for the Protection of Children to the director
 23 of the Georgia Bureau of Investigation or his or her designee; to provide for a short title; to
 24 provide for the director of the Georgia Bureau of Investigation to assist local child fatality
 25 review committees; to clarify definitions; to provide for legislative findings; to amend Code
 26 Section 49-5-41 of the Official Code of Georgia Annotated, relating to persons and agencies
 27 permitted access to child abuse and dependency records, so as to clarify defined terms and

28 change provisions relating to disclosure; to provide for related matters; to repeal conflicting
29 laws; and for other purposes.

30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

31 PART I

32 SECTION 1-1.

33 Article 6 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
34 delinquency proceedings in juvenile court, is amended by revising subsection (a) of Code
35 Section 15-11-600, relating to findings in a disposition hearing, as follows:

36 "(a)(1) After a finding that a child has committed a delinquent act, the court shall hear
37 evidence ~~on whether such~~ and determine whether:

38 (A) Such child is in need of treatment, rehabilitation, or supervision and;

39 (B) Such child's continuation in his or her home is contrary to such child's welfare; and

40 (C) Reasonable efforts have been made to prevent or eliminate the need to remove such
41 child from his or her home.

42 (2) After hearing the evidence described in paragraph (1) of this subsection, the court
43 shall make and file its findings based upon such determinations."

44 SECTION 1-2.

45 Said article is further amended by revising Code Section 15-11-620, relating to calculating
46 time when a child is delinquent and dependent, as follows:

47 "15-11-620.

48 (a) When a child is alleged to have committed a delinquent act and be a dependent child,
49 the date such child is considered to have entered foster care shall be the date of the first
50 judicial finding that such child has been subjected to child abuse or neglect or the date that
51 is 60 days after the date on which such child is removed from his or her home, whichever
52 is earlier.

53 (b) When a child is alleged to have committed a delinquent act and is placed directly in a
54 nonsecure residential facility, the date such child is considered to have entered foster care
55 shall be 60 days after the date on which such child is removed from his or her home.

56 ~~(b)(c)~~ (c) If a child alleged or adjudicated to have committed a delinquent act is detained in
57 a facility operated primarily for the detention of delinquent children but is later placed in
58 foster care within 60 days of such child's removal from the home, then the date of entry
59 into foster care shall be 60 days after the date of removal.

60 (d) When a child alleged or adjudicated to have committed a delinquent act is detained in
61 a facility operated primarily for the detention of delinquent children but is later placed in

62 a nonsecure residential facility within 60 days of such child's removal from the home, the
 63 date such child is considered to have entered foster care shall be 60 days from the date on
 64 which such child is removed from his or her home.

65 ~~(e)~~(e) If a child is detained in a facility operated primarily for the detention of delinquent
 66 children pending placement in foster care and remains detained for more than 60 days, then
 67 the date of entry into foster care shall be the date such child is placed in foster care.

68 (f) When a child alleged or adjudicated to have committed a delinquent act is detained in
 69 a facility operated primarily for the detention of delinquent children and remains detained
 70 for more than 60 days and such child is subsequently placed in a nonsecure residential
 71 facility, the date such child is considered to have entered foster care shall be the date such
 72 child was placed in a nonsecure residential facility."

73 SECTION 1-3.

74 Said article is further amended by revising Code Section 15-11-621, relating to periodic
 75 review hearings for children in foster care, as follows:

76 "15-11-621.

77 (a) The periodic review hearing requirements under Code Sections 15-11-216, 15-11-217,
 78 and 15-11-218 shall apply to proceedings involving a child alleged or adjudicated to have
 79 committed a delinquent act and placed in foster care.

80 (b) When a child is committed to DJJ and for whom a determination has been made that
 81 the child's continuation in his or her home is contrary to the child's welfare and he or she
 82 is placed in a nonsecure residential facility, such child shall receive a periodic review
 83 before an administrative review panel within DJJ within six months following the date the
 84 child entered the nonsecure residential facility and every six months thereafter while the
 85 child remains in such facility. The administrative review panel within DJJ shall transmit
 86 its report, including its findings and recommendations, to the court within five days after
 87 conducting its review."

88 SECTION 1-4.

89 Said article is further amended by adding a new Code section to read as follows:

90 "15-11-623.

91 (a) As used in this Code section, the term 'permanency plan' means a specific written plan
 92 prepared by DJJ designed to ensure that a child is reunified with his or her family or ensure
 93 that such child quickly attains a substitute long-term home when return to such child's
 94 family is not possible or is not in such child's best interests.

95 (b)(1) The court shall hold a hearing to review the permanency plan for each child
 96 committed to DJJ when a determination has been made that the child's continuation in his

97 or her home is contrary to the child's welfare, and the child is placed in a nonsecure
 98 residential facility.
 99 (2) Such hearing shall be held no later than 12 months from the date a child is considered
 100 to have entered foster care and every 12 months thereafter to make determinations
 101 including whether the permanency plan for such child is appropriate and whether
 102 reasonable efforts to finalize the permanency plan have been made by DJJ.
 103 (3) A child's parent, guardian, legal custodian, attorney, any relatives providing care for
 104 such child, and other interested parties shall be given written notice of such hearing at
 105 least five days in advance of such hearing and shall be advised that the permanency plan
 106 will be submitted to the court for consideration as the order of the court.
 107 (4) At least five days prior to such hearing, DJJ shall submit for the court's consideration
 108 a report recommending a permanency plan for a child committed to a nonsecure
 109 residential facility. Such report shall include documentation of the steps taken by DJJ to
 110 finalize the permanent placement for such child.
 111 (5) Subsequent to such hearing, the court shall make written findings of fact that shall
 112 include whether DJJ has made reasonable efforts to finalize the permanency plan in effect
 113 at the time of the hearing."

114 **SECTION 1-5.**

115 Article 3A of Chapter 5 of Title 40 of the Official Code of Georgia Annotated, relating to
 116 suspension of driver's license for certain drug offenses, is amended by revising Code Section
 117 40-5-76, relating to restoration or suspension of a defendant's driver's license or issuance of
 118 a limited driving permit, as follows:

119 "40-5-76.

120 (a) A judge presiding in a drug court division or mental health court division may order
 121 the department to restore a defendant's driver's license that has been or should be suspended
 122 pursuant to Code Section 40-5-75, suspend such license, or issue a defendant a limited
 123 driving permit in accordance with the provisions set forth in subsections (c) and (d) of
 124 Code Section 40-5-64 or with whatever conditions the court determines to be appropriate
 125 under the circumstances as a reward or sanction to the defendant's behavior in such court
 126 division. The court shall determine what fees, if any, shall be paid to the department for
 127 such reward or sanction, provided that such fee shall not be greater than the fee normally
 128 imposed for such services.

129 (b) A judge presiding in any court, other than the court divisions specified in subsection
 130 (a) of this Code section, may order the department to restore a defendant's driver's license
 131 that has been or should be suspended pursuant to Code Section 40-5-75 or issue a
 132 defendant a limited driving permit in accordance with the provisions set forth in

133 subsections (c) and (d) of Code Section 40-5-64 if the offense for which the defendant was
 134 convicted did not directly relate to the operation of a motor vehicle. The court shall
 135 determine what fees, if any, shall be paid to the department for the restoration of such
 136 driver's license or issuance of such limited driving permit, provided that such fee shall not
 137 be greater than the fee normally imposed for such services. Such judge may also order the
 138 department to suspend a defendant's driver's license that could have been suspended
 139 pursuant to Code Section 40-5-75 as a consequence of the defendant's violation of the
 140 terms of his or her probation."

141 **SECTION 1-6.**

142 Chapter 2 of Title 42 of the Official Code of Georgia Annotated, relating to the Board and
 143 Department of Corrections, is amended by revising Code Section 42-2-5.1, relating to special
 144 school districts for school age youth and educational programs for adult offenders, and by
 145 adding a new Code section to read as follows:

146 "42-2-5.1.

147 (a) In order to provide education for any school age youths incarcerated within any facility
 148 of the ~~Department of Corrections~~ department, the department shall be considered a special
 149 school district which shall be given the same funding consideration for federal funds that
 150 school districts within the state are given. The special school district under the department
 151 shall have the powers, privileges, and authority exercised or capable of exercise by any
 152 other school district. The schools within the special school district shall be under the
 153 control of the commissioner, who shall serve as the superintendent of schools for such
 154 district. The ~~Board of Corrections~~ board shall serve as the board of education for such
 155 district. The board, acting alone or in cooperation with the State Board of Education, shall
 156 establish education standards for the district. As far as is practicable, such standards shall
 157 adhere to the standards adopted by the State Board of Education for the education of school
 158 age youth, while taking into account:

159 (1) The overriding security needs of correctional institutions and other restrictions
 160 inherent to the nature of correctional facilities;

161 (2) The effect of limited funding on the capability of the ~~Department of Corrections~~
 162 department to meet certain school standards; and

163 (3) Existing juvenile education standards of the Correctional Education Association and
 164 the American Correctional Association, which shall be given primary consideration
 165 where any conflicts arise.

166 (b) The effect of subsection (a) of this Code section shall not be to provide state funds to
 167 the special school district under the department through Part 4 of Article 6 of Chapter 2 of
 168 Title 20.

169 42-2-5.2.

170 ~~(c)~~(a) The Board of Corrections board, acting alone or in cooperation with the State Board
 171 of the Technical College System of Georgia or other relevant education agencies, shall
 172 provide overall direction of educational programs for adult offenders in the correctional
 173 system and shall exercise program approval authority. The board may enter into written
 174 agreements with other educational organizations and agencies in order to provide adult
 175 offenders with such education and employment skills most likely to encourage gainful
 176 employment and discourage return to criminal activity upon release. The board may also
 177 enter into agreements with other educational organizations and agencies to attain program
 178 certification for its vocational and technical education programs.

179 (b) The board shall develop and implement programs to assist adult offenders with reentry
 180 into society upon release from prison. In addition to educational and vocational programs,
 181 reentry programs may include social and behavioral programs, substance abuse counseling,
 182 mentoring programs, financial planning, physical and mental health programs, and housing
 183 and federal assistance programs.

184 (c) The board shall create a Program and Treatment Completion Certificate that may be
 185 issued to offenders under the rules and regulations of the board. Such certificate shall
 186 symbolize an offender's achievements toward successful reentry into society. The board's
 187 rules and regulations relating to the issuance of such certificate shall take into account an
 188 offender's disciplinary record and any other factor the board deems relevant to an
 189 individual's qualification for such certificate. The board's rules and regulations shall
 190 specify eligibility considerations and requirements for completion of such certificate. An
 191 offender who was convicted of a serious violent felony, as such term is defined in Code
 192 Section 17-10-6.1, shall not be eligible for such certificate.

193 (d) Nothing in this Code section shall be construed to constitute a waiver of the sovereign
 194 immunity of the state, and no action shall be maintained against the state or any agency or
 195 department thereof for issuance of or failure to issue any Program and Treatment
 196 Completion Certificate."

197 **SECTION 1-7.**

198 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general tort
 199 provisions, is amended by adding a new Code section to read as follows:

200 "51-1-54.

201 (a) As used in this Code section, the term 'Program and Treatment Completion Certificate'
 202 means the certificate issued pursuant to Code Section 42-2-5.2.

203 (b) Issuance of a Program and Treatment Completion Certificate by the Department of
 204 Corrections or the granting of a pardon from the State Board of Pardons and Paroles as

205 provided in the Constitution and Code Section 42-9-42 shall create a presumption of due
 206 care in hiring, retaining, licensing, leasing to, admitting to a school or program, or
 207 otherwise engaging in activity with the individual to whom the Program and Treatment
 208 Completion Certificate was issued or the pardon was granted. Such presumption may be
 209 rebutted by relevant evidence which extends beyond the scope of the Program and
 210 Treatment Completion Certificate or pardon and which was known or should have been
 211 known by the person against whom negligence is asserted.

212 (c) Nothing in this Code section shall be construed to constitute a waiver of the sovereign
 213 immunity of the state, and no action shall be maintained against the state or any agency or
 214 department thereof for issuance of or failure to issue any Program and Treatment
 215 Completion Certificate or issuance of or failure to grant a pardon."

216 PART II

217 SECTION 2-1.

218 This part shall be known and may be cited as the "Journey Ann Cowart Act."

219 SECTION 2-2.

220 Article 11 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
 221 the "Georgia Child Advocate for the Protection of Children Act," is amended by revising
 222 Code Section 15-11-743, relating to the duties of the Child Advocate for the Protection of
 223 Children, as follows:

224 "15-11-743.

225 The advocate shall perform the following duties:

226 (1) Identify, receive, investigate, and seek the resolution or referral of complaints made
 227 by or on behalf of children concerning any act, omission to act, practice, policy, or
 228 procedure of an agency or any contractor or agent thereof that may adversely affect the
 229 health, safety, or welfare of the children;

230 (2) Refer complaints involving abused children to appropriate regulatory and law
 231 enforcement agencies;

232 ~~(3) Coordinate and supervise the work of the Georgia Child Fatality Review Panel~~
 233 ~~created by Code Section 19-15-4 and provide such staffing and administrative support to~~
 234 ~~the panel as may be necessary to enable the panel to carry out its statutory duties;~~

235 ~~(4)~~ Report the death of any child to the chairperson of the ~~child fatality~~ review
 236 ~~subcommittee of~~ committee, as such term is defined in Code Section 19-15-1, for the
 237 county in which such child resided at the time of death, unless the advocate has
 238 knowledge that such death has been reported by the county medical examiner or coroner,

239 pursuant to Code Section 19-15-3, and to provide such ~~subcommittee~~ committee access
 240 to any records of the advocate relating to such child;

241 ~~(5)~~(4) Provide periodic reports on the work of the Office of the Child Advocate for the
 242 Protection of Children, including but not limited to an annual written report for the
 243 Governor and the General Assembly and other persons, agencies, and organizations
 244 deemed appropriate. Such reports shall include recommendations for changes in policies
 245 and procedures to improve the health, safety, and welfare of children and shall be made
 246 expeditiously in order to timely influence public policy;

247 ~~(6)~~(5) Establish policies and procedures necessary for the Office of the Child Advocate
 248 for the Protection of Children to accomplish the purposes of this article, including without
 249 limitation providing DFCS with a form of notice of availability of the Office of the Child
 250 Advocate for the Protection of Children. Such notice shall be posted prominently, by
 251 DFCS, in DFCS offices and in facilities receiving public moneys for the care and
 252 placement of children and shall include information describing the Office of the Child
 253 Advocate for the Protection of Children and procedures for contacting ~~that~~ such office;
 254 and

255 ~~(7)~~(6) Convene quarterly meetings with organizations, agencies, and individuals who
 256 work in the area of child protection to seek opportunities to collaborate and improve the
 257 status of children in Georgia."

258 SECTION 2-3.

259 Chapter 15 of Title 19 of the Official Code of Georgia Annotated, relating to child abuse, is
 260 amended by revising paragraphs (5), (7), (8), and (10) of Code Section 19-15-1, relating to
 261 definitions, as follows:

262 ~~"(5) 'Eligible deaths' means deaths meeting the criteria for review by a county child~~
 263 ~~fatality review committee, including deaths resulting from Sudden Infant Death~~
 264 ~~Syndrome, unintentional injuries, intentional injuries, medical conditions when~~
 265 ~~unexpected or when unattended by a physician, or any manner that is suspicious or~~
 266 ~~unusual~~ Reserved."

267 ~~"(7) 'Panel' means the Georgia Child Fatality Review Panel established pursuant to Code~~
 268 ~~Section 19-15-4. The panel oversees the local child fatality review process and reports~~
 269 ~~to the Governor on the incidence of child deaths with recommendations for prevention.~~

270 (8) 'Protocol committee' means a multidisciplinary, multiagency ~~child abuse protocol~~
 271 ~~committee established for a county pursuant to Code Section 19-15-2. The protocol~~
 272 ~~committee is charged with developing local protocols to investigate and prosecute alleged~~
 273 ~~cases of child abuse."~~

274 "(10) 'Review committee' means a multidisciplinary, multiagency child fatality review
 275 committee established for a county or circuit pursuant to Code Section 19-15-3. ~~The~~
 276 ~~review committee is charged with reviewing all eligible child deaths to determine manner~~
 277 ~~and cause of death and if the death was preventable."~~

278 SECTION 2-4.

279 Said chapter is further amended by revising Code Section 19-15-2, relating to child abuse
 280 protocol committees, as follows:

281 "19-15-2.

282 (a) Each county shall be required to establish a ~~child abuse~~ protocol for the investigation
 283 and prosecution of alleged cases of child abuse as provided in this Code section.

284 (b) The chief superior court judge of the circuit in which the county is located shall
 285 establish a ~~child abuse~~ protocol committee as provided in subsection (c) of this Code
 286 section and shall appoint an interim chairperson who shall preside over the first meeting,
 287 and the chief superior court judge shall appoint persons to fill any vacancies on the protocol
 288 committee. Thus established, the protocol committee shall thereafter elect a chairperson
 289 from its membership. The protocol committee shall be charged with developing local
 290 protocols for the investigation and prosecution of alleged cases of child abuse.

291 (c)(1) Each of the following individuals, agencies, ~~of the county~~ and entities shall
 292 designate a representative to serve on the protocol committee:

293 (A) The ~~office of the~~ sheriff;

294 (B) The county department of family and children services;

295 (C) The ~~office of the~~ district attorney for the judicial circuit;

296 (D) The juvenile court judge;

297 (E) The chief magistrate ~~court~~;

298 (F) The county board of education;

299 (G) The county mental health organization;

300 (H) The ~~office of the~~ chief of police of a county in counties which have a county police
 301 department;

302 (I) The ~~office of the~~ chief of police of the largest municipality in the county;

303 (J) The county ~~board of~~ public health department, which shall designate a physician
 304 to serve on the protocol committee; and

305 (K) The ~~office of the~~ coroner or county medical examiner.

306 (2) In addition to the representatives serving on the protocol committee as provided for
 307 in paragraph (1) of this subsection, the chief superior court judge shall designate a
 308 representative from a local citizen or advocacy group which focuses on child abuse
 309 awareness and prevention.

310 (3) If any designated agency fails to carry out its duties relating to participation on the
 311 protocol committee, the chief superior court judge of the circuit may issue an order
 312 requiring the participation of such agency. Failure to comply with such order shall be
 313 cause for punishment as for contempt of court.

314 (d) Each protocol committee shall elect or appoint a chairperson who shall be responsible
 315 for ensuring that written protocol procedures are followed by all agencies. ~~Such That~~
 316 person can be independent of agencies listed in paragraph (1) of subsection (c) of this Code
 317 section. The ~~child-abuse~~ protocol committee ~~thus established~~ may appoint such additional
 318 members as necessary and proper to accomplish the purposes of the protocol committee.

319 (e) The protocol committee shall adopt a written ~~child-abuse~~ protocol which shall be filed
 320 with the Division of Family and Children Services of the Department of Human Services
 321 and the ~~Georgia Child Fatality Review Panel~~ panel, a copy of which shall be furnished to
 322 each agency in the county handling the cases of abused children. The protocol shall be a
 323 written document outlining in detail the procedures to be used in investigating and
 324 prosecuting cases arising from alleged child abuse and the methods to be used in
 325 coordinating treatment programs for the perpetrator, the family, and the child. The
 326 protocol shall also outline procedures to be used when child abuse occurs in a household
 327 where there is violence between past or present spouses, persons who are parents of the
 328 same child, parents and children, stepparents and stepchildren, foster parents and foster
 329 children, or other persons living or formerly living in the same household. The protocol
 330 adopted shall not be inconsistent with the policies and procedures of the Division of Family
 331 and Children Services of the Department of Human Services.

332 (f) The purpose of the protocol shall be to ensure coordination and cooperation between
 333 all agencies involved in a child abuse case so as to increase the efficiency of all agencies
 334 handling such cases, to minimize the stress created for the allegedly abused child by the
 335 legal and investigatory process, and to ensure that more effective treatment is provided for
 336 the perpetrator, the family, and the child, including counseling.

337 (g) Upon completion of the writing of the ~~child-abuse~~ protocol, the protocol committee
 338 shall continue in existence and shall meet at least semiannually for the purpose of
 339 evaluating the effectiveness of the protocol and appropriately modifying and updating the
 340 same.

341 (h) Each protocol committee shall adopt or amend its written ~~child-abuse~~ protocol ~~no later~~
 342 ~~than July 1, 2001~~, to specify the circumstances under which law enforcement officers ~~will~~
 343 shall and ~~will shall~~ not be required to accompany ~~child-abuse~~ investigators from the county
 344 department of family and children services when these investigators investigate reports of
 345 child abuse. In determining when law enforcement officers shall and shall not accompany
 346 ~~child-abuse~~ investigators, the protocol committee shall consider the need to protect the

347 alleged victim and the need to preserve the confidentiality of the report. Each protocol
 348 committee shall establish joint work efforts between the law enforcement and ~~child abuse~~
 349 investigative agencies in child abuse investigations. The adoption or amendment of the
 350 protocol shall also describe measures which can be taken within the county to prevent child
 351 abuse and shall be filed with and furnished to the same entities with or to which an original
 352 protocol is required to be filed or furnished. The protocol ~~will~~ shall be further amended to
 353 specify procedures to be adopted by the protocol committee to ensure that written protocol
 354 procedures are followed.

355 (i) The protocol committee shall issue a report no later than the first day of July ~~in 2001~~
 356 ~~and no later than the first day of July~~ each year thereafter. Such ~~That~~ report shall evaluate
 357 the extent to which ~~child abuse~~ investigations of child abuse during the 12 months prior to
 358 the report have complied with the ~~child abuse~~ protocols of the protocol committee,
 359 recommend measures to improve compliance, and describe which measures taken within
 360 the county to prevent child abuse have been successful. The report shall be transmitted to
 361 the county governing authority, the fall term grand jury of the judicial circuit, the ~~Georgia~~
 362 ~~Child Fatality Review Panel~~ panel, and the chief superior court judge.

363 (j) ~~Each member~~ By July 1, 2001, ~~members~~ of each protocol committee shall receive
 364 appropriate training. ~~As new members are appointed, they will also receive training~~ within
 365 12 months after ~~their~~ his or her appointment. The Office of the Child Advocate for the
 366 Protection of Children shall provide such training.

367 (k) The protocol committee shall adopt a written sexual abuse and sexual exploitation
 368 protocol which shall be filed with the Division of Family and Children Services of the
 369 Department of Human Services and the Office of the Child Advocate for the Protection of
 370 Children, a copy of which shall be furnished to each agency in the county handling the
 371 cases of sexually abused or exploited children. The sexual abuse and sexual exploitation
 372 protocol shall be a written document outlining in detail the procedures to be used in
 373 investigating and prosecuting cases arising from alleged ~~child~~ sexual abuse and sexual
 374 exploitation and the procedures to be followed concerning the obtainment of and payment
 375 for sexual assault examinations. Each protocol committee shall adopt or amend its written
 376 sexual abuse and sexual exploitation protocol ~~no later than December 31, 2004.~~ ~~The~~
 377 ~~protocol may incorporate existing sexual abuse and exploitation protocols used within the~~
 378 ~~county.~~ The sexual abuse and sexual exploitation protocol adopted shall be consistent with
 379 the policies and procedures of the Division of Family and Children Services of the
 380 Department of Human Services. ~~A failure by an agency to follow the protocol shall not~~
 381 ~~constitute an affirmative or other defense to prosecution of a sexual abuse or exploitation~~
 382 ~~offense, nor shall a failure by an agency to follow the protocol give rise to a civil cause of~~
 383 ~~action.~~ A sexual abuse and sexual exploitation protocol is not intended to, does not, and

384 may not be relied upon to create any rights, substantive or procedural, enforceable at law
 385 by any party in any matter civil or criminal. Such protocol shall not limit or otherwise
 386 restrict a prosecuting attorney in the exercise of his or her discretion nor in the exercise of
 387 any otherwise lawful litigative prerogatives."

388 **SECTION 2-5.**

389 Said chapter is further amended by revising subsections (a), (d), (e), (g) through (k), and (o)
 390 and paragraph (8) of subsection (1) of Code Section 19-15-3, relating to county multiagency
 391 child fatality review committees, as follows:

392 "(a)(1) Each county shall establish a local ~~multidisciplinary, multiagency child fatality~~
 393 review committee as provided in this Code section. The review committee shall be
 394 charged with reviewing all deaths as set forth in subsection (e) of this Code section to
 395 determine manner and cause of death and if the death was preventable. The chief
 396 superior court judge of the circuit in which the county is located shall establish a ~~child~~
 397 ~~fatality~~ review committee composed of, but not limited to, the following members:

- 398 (A) The county medical examiner or coroner;
- 399 (B) The district attorney or his or her designee;
- 400 (C) A county department of family and children services representative;
- 401 (D) A local law enforcement representative;
- 402 (E) The sheriff or county police chief or his or her designee;
- 403 (F) A juvenile court representative;
- 404 (G) A county ~~board of public health department~~ representative; and
- 405 (H) A county mental health representative.

406 (2) The district attorney or his or her designee shall serve as the chairperson to preside
 407 over all meetings."

408 "(d) If any designated agency fails to carry out its duties relating to participation on the
 409 ~~local~~ review committee, the chief superior court judge of the circuit or any superior court
 410 judge who is a member of the ~~Georgia Child Fatality Review Panel~~ panel shall issue an
 411 order requiring the participation of such agency. Failure to comply with such order shall
 412 be cause for punishment as for contempt of court.

413 (e) Deaths eligible for review by ~~local~~ review committees are all deaths of children ages
 414 birth through 17 as a result of:

- 415 (1) Sudden Infant Death Syndrome;
- 416 (2) Any unexpected or unexplained conditions;
- 417 (3) Unintentional injuries;
- 418 (4) Intentional injuries;
- 419 (5) Sudden death when the child is in apparent good health;

- 420 (6) Any manner that is suspicious or unusual;
- 421 (7) Medical conditions when unattended by a physician. For the purpose of this
 422 paragraph, no person shall be deemed to have died unattended when the death occurred
 423 while the person was a patient of a hospice licensed under Article 9 of Chapter 7 of Title
 424 31; ~~or~~
- 425 (8) Serving as an inmate of a state hospital or a state, county, or city penal institution; ~~or~~
 426 (9) Child abuse."
- 427 "(g) If the death of a child occurs outside the child's county of residence, it shall be the
 428 duty of the medical examiner or coroner in the county where the child died to notify the
 429 medical examiner or coroner in the county of the child's residence. It shall be the duty of
 430 such medical examiner or coroner to provide the protocol committee of the county of such
 431 child's residence with copies of all information and reports required by subsections (i) and
 432 (j) of this Code section.
- 433 (h) When a county medical examiner or coroner receives a report regarding the death of
 434 any child, he or she shall within 48 hours of the death notify the chairperson of the ~~child~~
 435 ~~fatality~~ review committee ~~of~~ for the county or circuit in which such child resided at the
 436 time of death.
- 437 (i) The coroner or county medical examiner shall review the findings regarding the cause
 438 and manner of death for each child death report received and respond as follows:
- 439 (1) If the death does not meet the criteria for review pursuant to subsection (e) of this
 440 Code section, the coroner or county medical examiner shall sign the form designated by
 441 the panel stating that the death does not meet the criteria for review. He or she shall
 442 forward the form and findings, within seven days of the child's death, to the chairperson
 443 of the ~~child fatality~~ review committee ~~in~~ for the county or circuit of the child's residence;
 444 or
- 445 (2) If the death meets the criteria for review pursuant to subsection (e) of this Code
 446 section, the coroner or county medical examiner shall complete and sign the form
 447 designated by the panel stating the death meets the criteria for review. He or she shall
 448 forward the form and findings, within seven days of the child's death, to the chairperson
 449 of the ~~child fatality~~ review committee ~~in~~ for the county or circuit of the child's residence.
- 450 (j) When the chairperson of a ~~local child fatality~~ review committee receives a report from
 451 the coroner or medical examiner regarding the death of a child, ~~that~~ such chairperson shall
 452 review the report and findings regarding the cause and manner of the child's death and
 453 respond as follows:
- 454 (1) If the report indicates the child's death does not meet the criteria for review and the
 455 chairperson agrees with this decision, the chairperson shall sign the form designated by

456 the panel stating that the death does not meet the criteria for review. He or she shall
457 forward the form and findings to the panel within seven days of receipt;

458 (2) If the report indicates the child's death does not meet the criteria for review and the
459 chairperson disagrees with this decision, the chairperson shall follow the procedures for
460 deaths to be reviewed pursuant to subsection (k) of this Code section;

461 (3) If the report indicates the child's death meets the criteria for review and the
462 chairperson disagrees with this decision, the chairperson shall sign the form designated
463 by the panel stating that the death does not meet the criteria for review. The chairperson
464 shall also attach an explanation for this decision; or

465 (4) If the report indicates the child's death meets the criteria for review and the
466 chairperson agrees with this decision, the chairperson shall follow the procedures for
467 deaths to be reviewed pursuant to subsection (k) of this Code section.

468 (k) When a child's death meets the criteria for review, the chairperson shall convene the
469 review committee within 30 days after receipt of the report for a meeting to review and
470 investigate the cause and circumstances of the death. Review committee members shall
471 provide information as specified ~~below~~ in this subsection, except where otherwise
472 protected by ~~statute~~ law:

473 (1) The providers of medical care and the medical examiner or coroner shall provide
474 pertinent health and medical information regarding a child whose death is being reviewed
475 by the ~~local~~ review committee;

476 (2) State, county, or local government agencies shall provide all of the following data on
477 forms designated by the panel for reporting child fatalities:

478 (A) Birth information for children who died at less than one year of age, including
479 confidential information collected for medical and health use;

480 (B) Death information for children who have not reached their eighteenth birthday;

481 (C) Law enforcement investigative data, medical examiner or coroner investigative
482 data, and parole and probation information and records;

483 (D) Medical care, including dental, mental, and prenatal health care; and

484 (E) Pertinent information from any social services agency that provided services to the
485 child or family; and

486 (3) The review committee may obtain from any superior court judge of the county or
487 circuit for which the review committee was created a subpoena to compel the production
488 of documents or attendance of witnesses when that judge has made a finding that such
489 documents or witnesses are necessary for the review committee's review. Service of,
490 objection to, and enforcement of subpoenas authorized by this Code section shall be
491 governed by the procedures set forth in Chapter 13 of Title 24. However, this Code

492 section shall not modify or impair the privileged communications as provided by law
493 except as otherwise provided in Code Section 19-7-5.

494 (4) Disclosure of protected health information pursuant to this subsection shall be
495 considered to be for a law enforcement purpose, and the review committee shall be
496 considered to be a law enforcement official within the meaning of the rules and
497 regulations adopted pursuant to the federal Health Insurance Portability and
498 Accountability Act of 1996. Disclosure of confidential or privileged matter to the review
499 committee pursuant to this Code section shall not serve to destroy or in any way abridge
500 the confidential or privileged character thereof, except for the purpose for which such
501 disclosure is made."

502 "(8) Include other findings as requested by the Georgia Child Fatality Review Panel
503 panel."

504 "(o) Each local review committee shall issue an annual report no later than the first day of
505 July in 2001 and in each year thereafter. The report shall:

506 (1) Specify the numbers of reports received by ~~that~~ such review committee from a county
507 medical examiner or coroner pursuant to subsection (h) of this Code section for the
508 preceding calendar year;

509 (2) Specify the number of reports of child fatality reviews prepared by the review
510 committee during such period;

511 (3) Be published at least once annually in the legal organ of the county or counties for
512 which the review committee was established with the expense of such publication paid
513 each by such county; and

514 (4) Be transmitted, no later than the fifteenth day of July ~~in 2001 and in~~ each year
515 ~~thereafter~~, to the ~~Georgia Child Fatality Review Panel~~ panel."

516 SECTION 2-6.

517 Said chapter is further amended by revising subsections (a), (b), (c), and the introductory
518 language of subsection (i) of Code Section 19-15-4, relating to the Georgia Child Fatality
519 Review Panel, as follows:

520 "(a) There is created the Georgia Child Fatality Review Panel as defined in paragraph (7)
521 of Code Section 19-15-4. The panel shall oversee the local child fatality review process
522 and report to the Governor on the incidence of child deaths with recommendations for
523 prevention.

524 ~~The Office of the Child Advocate for the Protection of Children~~ director of the Georgia
525 Bureau of Investigation or his or her designee shall coordinate the work of the panel and
526 shall provide such administrative and staff support to the panel as may be necessary to
527 enable the panel to discharge its duties under this chapter. The panel shall be attached to

528 the ~~Office of Planning and Budget~~ Division of Forensic Sciences of the Georgia Bureau of
 529 Investigation for administrative purposes, and its planning, policy, and budget functions
 530 shall be coordinated with those of the ~~Office of the Child Advocate~~ Division of Forensic
 531 Sciences of the Georgia Bureau of Investigation.

532 (c) The panel shall be composed as follows:

- 533 (1) One district attorney appointed by the Governor;
 534 (2) One juvenile court judge appointed by the Governor;
 535 (3) Two citizen members ~~who shall be appointed by the Governor~~, who are not employed
 536 by or officers of the state or any political subdivision thereof ~~and shall be appointed by~~
 537 the Governor, one of whom shall come from each of the following:
 538 (A) A a state-wide child abuse prevention organization; and
 539 (B) A a state-wide childhood injury prevention organization;
 540 (4) One forensic pathologist appointed by the Governor;
 541 (5) The chairperson of the Board of Human Services;
 542 (6) The director of the Division of Family and Children Services of the Department of
 543 Human Services;
 544 (7) The director of the Georgia Bureau of Investigation;
 545 (8) The chairperson of the Criminal Justice Coordinating Council;
 546 (9) A member of the Georgia Senate appointed by the Lieutenant Governor;
 547 (10) A member of the Georgia House of Representatives appointed by the Speaker of the
 548 House of Representatives;
 549 (11) A local law enforcement official appointed by the Governor;
 550 (12) A superior court judge appointed by the Governor;
 551 (13) A coroner appointed by the Governor;
 552 (14) The Child Advocate for the Protection of Children;
 553 (15) The commissioner of public health; ~~and~~
 554 (16) The commissioner of behavioral health and developmental disabilities;
 555 (17) A member of the State Board of Education appointed by the Governor; and
 556 (18) The commissioner of early care and learning."

557 "(i) By January 1 of each calendar year, the panel shall submit a report to the Governor,
 558 the Lieutenant Governor, the Speaker of the House of Representatives, ~~and the Judiciary~~
 559 ~~Committees~~ the chairperson of the Senate Judiciary Committee, and ~~House of~~
 560 ~~Representatives~~ the chairperson of the House Committee on Judiciary regarding the
 561 prevalence and circumstances of child fatalities in ~~the~~ this state; shall recommend measures
 562 to reduce such fatalities caused by other than natural causes; and shall address in the report
 563 the following issues:"

564

SECTION 2-7.

565 Said chapter is further amended by revising subsections (b), (g), and (i) of Code Section
566 19-15-6, relating to use of information and records of protocol committees, review
567 committees, and panels, as follows:

568 "(b) Notwithstanding any other provision of law to the contrary, reports of a review
569 committee made pursuant to Code Section 19-15-3 and reports of the panel made pursuant
570 to Code Section 19-15-4 shall be public records and shall be released to any person making
571 a request therefor, but the ~~panel~~ protocol committee, ~~or review committee, or panel~~ having
572 possession of such records or reports shall only release them after expunging therefrom all
573 information contained therein which would permit identifying the deceased or abused
574 child, any family member of the child, any alleged or suspected perpetrator of abuse upon
575 the child, or any reporter of suspected child abuse."

576 "(g) A member of a protocol committee, a review committee, or the panel shall not be
577 civilly liable or ~~criminally liable~~ subject to criminal prosecution for any disclosure of
578 information made by such member as authorized by this Code section."

579 "(i) Notwithstanding any other provisions of law, information acquired by and documents,
580 records, and reports of the panel and ~~child abuse~~ protocol committees and review
581 committees applicable to a child who at the time of his or her death was in the custody of
582 a state department or agency or foster parent shall not be confidential and shall be subject
583 to Article 4 of Chapter 18 of Title 50, relating to open records."

584

SECTION 2-8.

585 Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
586 general provisions for the Georgia Bureau of Investigation, is amended by revising Code
587 Section 35-3-5, relating to the powers and duties of the director of the Georgia Bureau of
588 Investigation, as follows:

589 "35-3-5.

590 (a) There is created the position of director.

591 (b) The director shall be the chief administrative officer and shall be both appointed and
592 removed by the Board of Public Safety with the approval of the Governor.

593 (c) The director shall coordinate and supervise the work of the Georgia Child Fatality
594 Review Panel created by Code Section 19-15-4 or shall designate a person from within the
595 bureau to serve as the coordinator and supervisor and shall provide such staffing and
596 administrative support to the Georgia Child Fatality Review Panel as may be necessary to
597 enable it to carry out its statutory duties.

598 (d) The director shall report the death of any child to the chairperson of the review
599 committee, as such term is defined in Code Section 19-15-1, for the county in which such

600 child resided at the time of death, unless the director or his or her designee has knowledge
 601 that such death has been reported by the county medical examiner or coroner, pursuant to
 602 Code Section 19-15-3, and shall provide such review committee access to any records of
 603 the bureau relating to such child.

604 ~~(c)~~(e) Except as otherwise provided by this chapter, and subject to the general policy
 605 established by the board, the director shall supervise, direct, account for, organize, plan,
 606 administer, and execute the functions vested in the bureau by this chapter."

607 **SECTION 2-9.**

608 It is the intent of the General Assembly to provide for transparency relative to investigations
 609 involving child abuse and child fatalities in order to best protect the children of this state.
 610 The General Assembly finds that more disclosure of information may be necessary when a
 611 child is deceased. The General Assembly intends that agencies and departments of this state
 612 share data in order to conduct research for the purpose of preventing child fatalities in this
 613 state.

614 **SECTION 2-10.**

615 Code Section 49-5-41 of the Official Code of Georgia Annotated, relating to persons and
 616 agencies permitted access to child abuse and dependency records, is amended by revising
 617 paragraphs (6), (7.1), and (8) of subsection (a), paragraph (5) of subsection (c), and
 618 subsection (e) as follows:

619 ~~"(6) Any adult requesting information regarding investigations by the department or a~~
 620 ~~governmental child protective agency regarding the findings or information about the~~
 621 ~~case of child abuse or neglect that results in a child involving a fatality or near fatality;~~
 622 ~~unless such disclosure of information would jeopardize a criminal investigation or~~
 623 ~~proceeding, but such access shall be limited to a disclosure of the available facts and~~
 624 ~~findings. Any identifying information, including but not limited to the child or~~
 625 ~~caretaker's name, race, ethnicity, address, or telephone numbers and any other~~
 626 ~~information that is privileged or confidential, shall be redacted to preserve the~~
 627 ~~confidentiality of the child, other children in the household, and the child's parents,~~
 628 ~~guardians, custodians, or caretakers; provided, however, that the following may be~~
 629 ~~redacted from such records:~~

- 630 (A) Any record of law enforcement or prosecution agencies in any pending
 631 investigation or prosecution of criminal activity contained within the child abuse,
 632 neglect, or dependency records;
 633 (B) Medical and mental health records made confidential by other provisions of law;
 634 (C) Privileged communications of an attorney;

- 635 (D) The identifying information of a person who reported suspected child abuse;
 636 (E) Information that may cause mental or physical harm to the sibling or other child
 637 living in the household of the child being investigated;
 638 (F) The name of a child who is the subject of reported child abuse or neglect;
 639 (G) The name of any parent or other person legally responsible for the child who is the
 640 subject of reported child abuse or neglect, provided that such person is not under
 641 investigation for the reported child abuse or neglect; and
 642 (H) The name of any member of the household of the child who is the subject of
 643 reported child abuse or neglect, provided that such person is not under investigation for
 644 the reported child abuse or neglect."

645 "(7.1) A child advocacy center which is certified by the ~~Child Abuse Protocol Committee~~
 646 of protocol committee, as such term is defined in Code Section 19-15-1, for the county
 647 where the principal office of the center is located as participating in the Georgia Network
 648 of Children's Advocacy Centers of Georgia or a similar accreditation organization and
 649 which is operated for the purpose of investigation of known or suspected child abuse and
 650 treatment of a child or a family which is the subject of a report of abuse, and which has
 651 been created and supported through one or more intracommunity compacts between such
 652 advocacy center and one or more police agencies, the office of the district attorney, a
 653 legally mandated public or private child protective agency, a mental health board, and a
 654 community health service board; provided, however, that any child advocacy center
 655 which is granted access to records concerning reports of child abuse shall be subject to
 656 the confidentiality provisions of subsection (b) of Code Section 49-5-40 and shall be
 657 subject to the penalties imposed by Code Section 49-5-44 for authorizing or permitting
 658 unauthorized access to or use of such records;

659 (8) Police or any other law enforcement agency of this state or any other state or any
 660 medical examiner or coroner investigating a report of known or suspected abuse or any
 661 ~~child fatality review panel committee or child abuse protocol committee or subcommittee~~
 662 ~~thereof~~ created pursuant to Chapter 15 of Title 19, it being found by the General
 663 Assembly that the disclosure of such information is necessary in order for such entities
 664 to carry out their legal responsibilities to protect children from abuse and neglect, which
 665 protective actions include bringing criminal actions for such abuse or neglect, and that
 666 such disclosure is therefore permissible and encouraged under the 1992 amendments to
 667 Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section
 668 5106(A)(b)(4); and"

669 "(5) An agency, facility, or person having responsibility or authorization to assist in
 670 making a judicial determination for the child who is the subject of the report or record of
 671 child abuse, including but not limited to members of officially recognized citizen review

672 panels, court appointed guardians ad litem, certified Court Appointed Special Advocate
 673 (CASA) volunteers who are appointed by a judge of a juvenile court to act as advocates
 674 for the best interest of a child in a juvenile proceeding, and members of a ~~county child~~
 675 ~~abuse protocol committee or task force, as such term is defined in Code Section 19-15-1;~~
 676 "(e)(1) Except as provided in paragraph (2) of this subsection and notwithstanding
 677 Notwithstanding any other provisions of law, with the exception of medical and mental
 678 health records made confidential by other provisions of law, child abuse and dependency
 679 records shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title
 680 50 if the records are applicable to a child who at the time of his or her fatality or near
 681 fatality was:

682 (1)(A) In the custody of a state department or agency or in the care of a foster parent;
 683 (2)(B) A child as defined in paragraph (3) of Code Section 15-11-741; or
 684 (3)(C) The subject of an investigation, report, referral, or complaint under Code
 685 Section 15-11-743

686 ~~shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50,~~
 687 ~~relating to open records; provided, however, that any identifying information, including~~
 688 ~~but not limited to the child or caretaker's name, race, ethnicity, address, or telephone~~
 689 ~~numbers and any other information that is privileged or confidential, shall be redacted to~~
 690 ~~preserve the confidentiality of the child, other children in the household, and the child's~~
 691 ~~parents, guardians, custodians, or caretakers.~~

692 (2) The following may be redacted from such records:

693 (A) Medical and mental health records made confidential by other provisions of law;
 694 (B) Privileged communications of an attorney;
 695 (C) The identifying information of a person who reported suspected child abuse;
 696 (D) The name of a child who suffered a near fatality;
 697 (E) The name of any sibling of the child who suffered the fatality or near fatality; and
 698 (F) Any record of law enforcement or prosecution agencies in any pending
 699 investigation or prosecution of criminal activity contained within the child abuse,
 700 neglect, or dependency records.

701 (3) Upon the release of documents pursuant to this subsection, the department may
 702 comment publicly on the case."

703 **PART III**

704 **SECTION 3-1.**

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