

House Bill 915

By: Representatives Welch of the 110th, Willard of the 51st, Oliver of the 82nd, Houston of the 170th, and Dempsey of the 13th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 49 of the Official Code of Georgia Annotated, relating to social services, so
2 as to establish that criminal records checks shall be required for owners and employees of
3 certain licensed facilities under the Department of Human Services; to establish a public
4 scorecard for child welfare agencies under the Department of Human Services; to define
5 certain terms; to provide that the department shall conduct contracts and licensure
6 compliance inspections as required by any state department division, or agency, or the
7 Division of Family and Children Services, the Department of Juvenile Justice, the
8 Department of Behavioral Health and Developmental Disabilities, and the Department of
9 Community Health; to provide for the issuance and use of such certification; to provide for
10 confidentiality; to provide for related matters; to repeal conflicting laws; and for other
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended
15 by repealing Code Section 49-2-14.1, relating to definitions and records check requirement
16 for licensing certain facilities, and by enacting a new Code Section 49-2-14.1 to read as
17 follows:

18 "49-2-14.1.

19 (a) As used in this Code section, the term:

20 (1) 'Contract' means the agreement entered into between any state department, division,
21 or agency and a facility which requires a license or commission from the department to
22 provide care and services to children.

23 (2) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of
24 whether an appeal of the conviction has been sought.

25 (3) 'Crime' means the commission of any of the following offenses:

26 (A) A violation of Code Section 16-5-1, relating to murder;

- 27 (B) A violation of Code Section 16-5-21, relating to aggravated assault;
 28 (C) A violation of Code Section 16-5-24, relating to aggravated battery;
 29 (D) A violation of Code Section 16-5-70, relating to cruelty to children;
 30 (E) A violation of Article 8 of Chapter 5 of Title 16, relating to cruelty to a person 65
 31 years of age or older;
 32 (F) A violation of Code Section 16-6-1, relating to rape;
 33 (G) A violation of Code Section 16-6-2, relating to aggravated sodomy;
 34 (H) A violation of Code Section 16-6-4, relating to child molestation;
 35 (I) A violation of Code Section 16-6-5, relating to enticing a child for indecent
 36 purposes;
 37 (J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in
 38 custody, detained persons, or patients in hospitals or other institutions;
 39 (K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;
 40 (L) A violation of Code Section 16-8-41, relating to armed robbery; or
 41 (M) Any other offense committed in another jurisdiction that, if committed in this
 42 state, would be deemed to be a crime pursuant to this paragraph without regard to its
 43 designation elsewhere.
- 44 (4) 'Criminal record' means any of the following:
- 45 (A) A conviction of a crime;
- 46 (B) An arrest, charge, and sentencing for a crime where:
- 47 (i) A plea of nolo contendere was entered to the charge;
 48 (ii) First offender treatment without adjudication of guilt pursuant to a charge was
 49 granted; provided, however, that this division shall not apply to a violation of
 50 Chapter 13 of Title 16 or any other offense committed in another jurisdiction which,
 51 if it were committed in this state, would be a violation of Chapter 13 of Title 16, and
 52 provided that such violation or offense constituted only simple possession; or
 53 (iii) An adjudication or sentence was otherwise withheld or not entered on the
 54 charge; provided, however, that this division shall not apply to a violation of
 55 Chapter 13 of Title 16 or any other offense committed in another jurisdiction which,
 56 if it were committed in this state, would be a violation of Chapter 13 of Title 16, and
 57 provided that such violation or offense constituted only simple possession;
- 58 (C) An arrest and charge for a crime if the charge is pending, unless the time for
 59 prosecuting such crime has expired pursuant to Chapter 3 of Title 17; or
- 60 (D) A serious traffic offense, including:
- 61 (i) Reckless driving;
 62 (ii) Driving while impaired by alcohol, drugs, or toxic vapor;
 63 (iii) Homicide by vehicle;

- 64 (iv) Feticide by vehicle in the first degree;
 65 (v) Fleeing or attempting to elude a police officer;
 66 (vi) Impersonation of a law enforcement officer; or
 67 (vii) Homicide or serious injury by interference with a traffic-control device or
 68 railroad sign or signal.
- 69 (5) 'Criminal records check' means the use of information provided in the criminal
 70 records application to determine at the state and federal levels whether a person has been
 71 convicted of a crime or has pending criminal charges.
- 72 (6) 'Employee' means any person who:
- 73 (A) Resides at a facility;
 74 (B) Has direct access to persons receiving care at a facility;
 75 (C) Provides direct personal supervision of facility personnel by being immediately
 76 available to provide assistance and direction during the time facility services are being
 77 provided; or
 78 (D) Is under the supervision of facility personnel to provide facility services.
- 79 (7) 'Facility' means a child welfare agency required to be licensed under Code Section
 80 49-5-12.
- 81 (8) 'GCIC' means the Georgia Crime Information Center established under Article 2 of
 82 Chapter 3 of Title 35.
- 83 (9) 'GCIC information' means criminal history record information as defined in Code
 84 Section 35-3-30.
- 85 (10) 'License' means the document issued by the department to commission or otherwise
 86 authorize a facility to operate.
- 87 (11) 'Owner' means any person affiliated with a corporation, partnership, or association
 88 with 10 percent or greater ownership interest in a facility providing care to persons under
 89 the license of the facility in this state and who:
- 90 (A) Purports to exercise or exercises authority of the owner in a facility;
 91 (B) Applies to operate or operates a facility;
 92 (C) Maintains an office on the premises of a facility;
 93 (D) Resides at a facility;
 94 (E) Has direct access to persons receiving care at a facility;
 95 (F) Provides direct personal supervision of facility personnel by being immediately
 96 available to provide assistance and direction during the time facility services are being
 97 provided; or
 98 (G) Enters into a contract to acquire ownership of a facility.
- 99 (12) 'Records check application' means the form for the applicant's name, date of birth,
 100 social security number, and fingerprints in such form and of such quality as prescribed

101 by the GCIC under standards adopted by the Federal Bureau of Investigation and a
102 records search fee, payable in such form as the department may direct to cover the cost
103 of obtaining criminal background information pursuant to this Code section.

104 (b) An owner shall not operate or hold a license or maintain a contract to operate a facility
105 if the owner or its employees have a criminal record.

106 (c)(1) The department shall perform the criminal record check on behalf of any state
107 department, division, or agency that contracts with a facility, which may include the
108 Division of Family and Children Services, the Department of Community Health, the
109 Department of Juvenile Justice, and the Department of Behavioral Health and
110 Developmental Disabilities. Such other state departments, divisions, or agencies shall
111 cooperate with the department to develop such coordinated criminal background system.

112 (2) Upon receiving the results of the criminal record check as provided in paragraph (1)
113 of this subsection, the department shall issue a certification that the owner or employee
114 concerned has or does not have a criminal record under this Code section. The department
115 shall treat the results of the criminal record search as confidential and shall not disclose any
116 details of such criminal record search beyond the issuance of such certification.

117 Information received from the Federal Bureau of Investigation or the GCIC for the
118 purposes of this Code section shall be maintained by the department pursuant to the
119 applicable laws, rules, and regulations of the Federal Bureau of Investigation and the
120 GCIC. Penalties for the unauthorized release or disclosure of any such information shall
121 be as prescribed pursuant to applicable laws, rules, or regulations of the Federal Bureau of
122 Investigation and the GCIC.

123 (3) Any other state department, division, or agency, including, but not limited to, the
124 department, the Division of Family and Children Services, the Department of Community
125 Health, the Department of Juvenile Justice, and the Department of Behavioral Health and
126 Developmental Disabilities, shall use the certification issued as provided in paragraph (2)
127 of this subsection in lieu of performing their own independent criminal record check for
128 such facility or its owner or employees. The certification shall remain valid for a period of
129 three years after the date of issuance, unless recertification is required by the department
130 pursuant to this Code section.

131 (d)(1) Prior to approving any license or contract for a facility and periodically as
132 established by the department by rule and regulation, the department shall require an
133 owner and its employees to submit a records check application. The department shall
134 establish a uniform method of obtaining owners' and employees' records check
135 applications.

136 (2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph,
137 the department shall transmit to the GCIC the records check application and search fee

138 from each records check application in accordance with Code Section 35-3-35. Upon
139 receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau
140 of Investigation for a search of bureau records and an appropriate report and shall
141 promptly conduct a search of its records and records to which it has access. Within ten
142 days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall
143 notify the department in writing of any criminal record or if there is no such finding.
144 After a search of Federal Bureau of Investigation records and fingerprints and upon
145 receipt of the bureau's report, the department shall make a determination about an
146 owner's or employee's criminal record and shall notify the owner or employee in
147 writing as to the department's determination regarding whether the owner or employee
148 has or does not have a criminal record.

149 (B) The department may either perform criminal background checks under agreement
150 or contract with the GCIC and appropriate law enforcement agencies which have access
151 to GCIC and Federal Bureau of Investigation information to have such agencies
152 perform for the department criminal background checks for owners or employees. The
153 department or the appropriate law enforcement agencies may charge reasonable fees
154 for performing criminal background checks.

155 (3)(A) The department's determination regarding an owner's or employee's criminal
156 record, or any action by the department revoking or refusing to grant a license or
157 terminating or suspending any contract based on such determination, shall constitute
158 a contested case for purposes of Chapter 13 of Title 50, the 'Georgia Administrative
159 Procedure Act,' except that any hearing required to be held pursuant thereto may be
160 held reasonably expeditiously after such determination or action by the department. The
161 commissioner shall not have the right to overturn or alter the decision of an
162 administrative law judge except by way of settlement.

163 (B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b)
164 of this Code section, the hearing officer shall consider in mitigation the length of time
165 since the crime was committed, the absence of additional criminal charges, the
166 circumstances surrounding the commission of the crime, other indicia of rehabilitation,
167 the facility's history of compliance with the regulations, and the owner's or employee's
168 involvement with the licensed facility in arriving at a decision as to whether the
169 criminal record requires the denial or revocation of a license or termination or
170 suspension of a contract to operate the facility. When a hearing is required, at least 30
171 days prior to such hearing, the hearing officer shall notify the office of the prosecuting
172 attorney who initiated the prosecution of the crime in question in order to allow the
173 prosecuting attorney to object to a possible determination that the conviction would not
174 be a bar for the grant or continuation of a license or contract as contemplated within this

175 Code section. If objections are made, the hearing officer shall take such objections into
 176 consideration.

177 (4) The GCIC, the department, any law enforcement agency, and the employees of any
 178 such entities shall not be responsible for the accuracy of information nor have any
 179 liability for defamation, invasion of privacy, negligence, or any other claim in connection
 180 with any dissemination of information or determination based thereon pursuant to this
 181 Code section.

182 (e) All information received from the Federal Bureau of Investigation or the GCIC shall
 183 be for the exclusive purpose of approving, denying, or revoking a license or terminating
 184 or suspending a contract to a facility or the revision of an existing license or contract of a
 185 facility when a new owner is proposed and shall not be released or otherwise disclosed to
 186 any other person or agency. All such information collected by the department shall be
 187 maintained by the department pursuant to the applicable laws, rules, and regulations of the
 188 Federal Bureau of Investigation and the GCIC. Penalties for the unauthorized release or
 189 disclosure of any such information shall be as prescribed pursuant to the applicable laws,
 190 rules, and regulations of the Federal Bureau of Investigation and the GCIC.

191 (f) The requirements of this Code section are supplemental to any requirements for a
 192 license imposed by Article 3 of Chapter 5 of this title, Article 11 of Chapter 7 of Title 31,
 193 or any contract as defined in this Code section.

194 (g) The department shall promulgate written rules and regulations to implement the
 195 provisions of this Code section."

196 **SECTION 2.**

197 Said title is further amended by adding a new Code section to read as follows:

198 "49-5-4.1.

199 (a) As used in this Code section, the term 'child welfare agency' or 'agency' means any
 200 child-caring institution, child-placing agency, children's transition care center, or maternity
 201 home.

202 (b) The Department of Human Services shall establish a child welfare agency public
 203 scorecard to grade child welfare agencies.

204 (c) For any state departments, divisions, or agencies that rely on department licenses or
 205 commissions issued to child welfare agencies, which may include the Division of Family
 206 and Children Services, the Department of Juvenile Justice, the Department of Behavioral
 207 Health and Developmental Disabilities, and the Department of Community Health, such
 208 state departments, divisions, or agencies shall cooperate with the department to develop
 209 and establish a child welfare agency public scorecard.

210 (d) The public scorecard for child welfare agencies shall be published in a single location
 211 on a website for public review. Such website shall provide grades for each child welfare
 212 agency by the respective state agency or office that is responsible for the regulation of each
 213 particular agency. The score shall be posted within 30 days of the completion of an
 214 inspection or, if appealed, within 30 days of the conclusion of the appeal if such score is
 215 changed.

216 (e) The grades shall be based on an established published formula with weight
 217 appropriately given for each agency's compliance or noncompliance with applicable rules,
 218 policies, court orders, and other pertinent information, based on empirical evidence to the
 219 greatest extent possible.

220 (f) The department shall provide child welfare agencies with advanced written notice of
 221 the score to be posted. An agency may contest the score by filing a written appeal with the
 222 department within 30 days from receipt of such notice. If an agency contests such score,
 223 the department shall note on the publication that the score is under appeal until such appeal
 224 is concluded. Within 60 days of receipt of an agency's written contest of a score, the
 225 department shall hold a refutation meeting with the agency and any agency whose score
 226 is contested. The refutation meeting is for the parties to discuss the score and basis for
 227 contesting the score. If the refutation meeting does not result in a resolution regarding the
 228 score, the agency may contest the score as a contested case under Chapter 13 of Title 50,
 229 the 'Georgia Administrative Procedure Act'; provided, however, that the commissioner
 230 shall not have the right to overturn or alter the decision of an administrative law judge
 231 except by way of settlement.

232 (g) In order to effectuate and enforce this Code section, the department is authorized to
 233 promulgate rules and regulations to carry out the purposes of this Code section."

234 **SECTION 3.**

235 Said title is further amended in Code Section 49-5-12, relating to licensing and inspection
 236 of child welfare agencies, standards, revocation or refusal to license, penalties, and
 237 violations, by revising subsections (h), (p), and (q) as follows:

238 "(h) The department's action revoking or refusing to renew or issue a license or
 239 commission required by this Code section shall be preceded by notice and opportunity for
 240 a hearing and shall constitute a contested case within the meaning of Chapter 13 of Title
 241 50, the 'Georgia Administrative Procedure Act,' except that:

242 (1) Only ~~only~~ 30 days' notice in writing from the commissioner's designee shall be
 243 required prior to license or commission revocation; ~~and except that~~

244 (2) Hearings ~~hearings~~ held relating to such action by the department may be closed to the
 245 public if the hearing officer determines that an open hearing would be detrimental to the
 246 physical or mental health of any child who will testify at that hearing; and

247 (3) The commissioner shall not have the right to overturn or alter the decision of an
 248 administrative law judge except by way of settlement."

249 "(p) Any child welfare agency that shall operate without a license or commission issued
 250 by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be
 251 punished by a fine of not less than ~~\$50.00~~ \$500.00 nor more than ~~\$200.00~~ \$1,000.00 for
 252 each such offense. Each day of operation without a license or commission shall constitute
 253 a separate offense.

254 (q) No person, official, agency, hospital, maternity home, or institution, public or private,
 255 in this state shall receive or accept a child under 17 years of age for placement or adoption
 256 or place such a child, either temporarily or permanently, in a home other than the home of
 257 the child's relatives without having been licensed or commissioned by the department.
 258 Notwithstanding the provisions of Code Section 49-5-12.1, violation of this subsection
 259 shall be punishable by a fine of not less than ~~\$100.00~~ \$500.00 nor exceeding ~~\$500.00~~
 260 \$1,000.00 for each offense. Nothing in this Code section shall be construed to prohibit a
 261 properly licensed attorney at law from providing necessary legal services and counsel to
 262 parties engaged in or contemplating adoption proceedings. Nothing in this Code section
 263 shall be construed to prohibit an individual seeking to:

264 (1) Adopt a child or children from receiving or accepting a child or children in the
 265 individual's home in anticipation of filing a petition for adoption under Article 1 of
 266 Chapter 8 of Title 19; or

267 (2) Have that individual's child or children placed for adoption from placing that
 268 individual's child or children in the home of an individual who is not related to the child
 269 or children in anticipation of the individual's initiation of adoption proceedings pursuant
 270 to Article 1 of Chapter 8 of Title 19."

271 **SECTION 4.**

272 Said title is further amended by adding a new Code section to read as follows:

273 "49-5-12.3.

274 (a) As used in this Code section, the term:

275 (1) 'Annual inspection' means an inspection of a child welfare agency's facility, books,
 276 minutes, financial statements, files, employees, programs, and contracts to ensure
 277 contract compliance and licensure compliance.

278 (2) 'Child welfare agency' means any child-caring institution, child-placing agency,
 279 children's transition care center, or maternity home.

280 (3) 'Contract compliance' means adherence to the terms of a contract a child welfare
281 agency has with the Division of Family and Children Services, the Department of
282 Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities,
283 and the Department of Community Health to provide child welfare services.

284 (4) 'Licensure compliance' means adherence to licensing or commissioning requirements
285 established pursuant to and in accordance with Code Section 49-5-12.

286 (b) The department shall perform the annual inspection of all child welfare agencies on
287 behalf of any state department, division, or agency which requires a license or commission
288 from the department for child welfare agencies, including, but not limited to, the Division
289 of Family and Children Services, the Department of Juvenile Justice, the Department of
290 Behavioral Health and Developmental Disabilities, or the Department of Community
291 Health. Said state departments, divisions, or agencies shall not duplicate an annual
292 inspection but shall cooperate with the department in its performance of the annual
293 inspection. The department shall share the results of the annual inspection with the
294 applicable state department, division, or agency having a contract with the inspected child
295 welfare agency.

296 (c) The department shall perform the annual inspection as one inspection and conduct such
297 inspection on an annual basis. Said annual inspection shall not occur sooner than 330 days
298 or later than 390 days after the date on which the last annual inspection began. Said
299 inspection shall not exceed five days. A child welfare agency may submit to the
300 department in writing prior to the commencement of the annual inspection no more than
301 three dates on which the agency will not be able to host the annual inspection, and the
302 department shall refrain from performing the annual inspection on such dates. The
303 department may reduce the extent of the annual inspection by reducing the frequency or
304 the extent of the inspection for contract compliance when the child welfare agency has
305 shown an exceptional history of contract compliance as determined upon past scores.

306 (d) A child welfare agency may contest the results of an annual inspection by filing a
307 written appeal to the department within 30 days of the issuance of the department's annual
308 inspection report. Within 60 days of receipt of a child welfare agency's written appeal of
309 the annual inspection, the department shall hold a meeting with the child welfare agency.
310 The meeting shall be for the parties to discuss the annual inspection. If the meeting does
311 not result in a resolution regarding the annual inspection, the child welfare agency may
312 contest such annual inspection results under Chapter 13 of Title 50, the 'Georgia
313 Administrative Procedure Act'; provided, however, that the commissioner shall not have
314 the right to overturn or alter the decision of an administrative law judge except by way of
315 settlement.

316 (e) The annual inspection shall not eliminate the requirement for each state department,
317 division, and agency to respond to and investigate specific incidents of harm to or
318 endangerment of children.

319 (f) In order to effectuate and enforce this Code section, the department is authorized to
320 promulgate rules and regulations to carry out the purposes of this Code section."

321 **SECTION 5.**

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