

House Bill 725 (COMMITTEE SUBSTITUTE)

By: Representatives Cantrell of the 22nd, Spencer of the 180th, Ballinger of the 23rd, Weldon of the 3rd, Evans of the 42nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated,
2 relating to child abuse and deprivation records, so as to provide for greater confidentiality
3 of child abuse records; to provide for and revise definitions; to change provisions relating to
4 persons and agencies permitted access to records of child abuse; to provide for contents of
5 a protective order; to provide for immunity for child advocacy centers in releasing child
6 abuse records under certain circumstances; to provide for a short title; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Child Abuse Records Protection Act."

11 **SECTION 2.**

12 Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to child
13 abuse and deprivation records, is amended by revising Code Section 49-5-40, relating to
14 definitions for the article and confidentiality of records, as follows:

15 "49-5-40.

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

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

18 (2) 'Child' means ~~any person~~ an individual under 18 years of age.

19 (3) 'Child abuse' means:

20 (A) Physical injury or death inflicted upon a child by a parent, guardian, legal
21 custodian, or caretaker thereof by other than accidental means; provided, however, that
22 physical forms of discipline may be used as long as there is no physical injury to the
23 child;

24 (B) Neglect or exploitation of a child by a parent, guardian, legal custodian, or
25 caretaker thereof;

- 26 (C) Sexual abuse of a child; ~~or~~
 27 (D) Sexual exploitation of a child; or
 28 (E) Emotional abuse of a child.

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

33 (4) 'Child advocacy center' means an entity which is operated for the purposes of
 34 investigating known or suspected child abuse and treating a child or a family that is the
 35 subject of a report of child abuse and which:

36 (A) Has been created and supported through one or more intracommunity compacts
 37 between such center and:

38 (i) One or more law enforcement agencies within this state; any other state; the
 39 United States including its territories, possessions, and dominions; or a foreign nation;

40 (ii) The office of the district attorney, Attorney General, or United States Attorney;

41 (iii) A legally mandated public or private child protective agency within this state;
 42 any other state; the United States including its territories, possessions, and dominions;
 43 or a foreign nation;

44 (iv) A mental health board within this state; any other state; the United States
 45 including its territories, possessions, and dominions; or a foreign nation; or

46 (v) A community health service board within this state; any other state; the United
 47 States including its territories, possessions, and dominions; or a foreign nation; and

48 (B) Has been approved by a protocol committee established under Chapter 15 of
 49 Title 19.

50 (5) 'Court' means a judge of any court of record or an administrative law judge of the
 51 Office of State Administrative Hearings.

52 (6) 'Emotional abuse' shall have the same meaning as set forth in Code Section 15-11-2.

53 (7) 'Legal custodian' shall have the same meaning as set forth in Code Section 15-11-2.

54 ~~(4)~~(8) 'Near fatality' means an act that places a child in serious or critical condition as
 55 certified by a physician.

56 (9) 'Record' shall include documents, books, maps, drawings, computer based or
 57 generated information, data, data fields, digital images, photographs, video images, audio
 58 recordings, and video recordings.

59 ~~(5)~~(10) 'Sexual abuse' means a person's an individual's employing, using, persuading,
 60 inducing, enticing, or coercing any minor child who is not that person's individual's
 61 spouse to engage in any act which involves:

- 62 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
 63 oral-anal, whether between ~~persons~~ individuals of the same or opposite sex;
 64 (B) Bestiality;
 65 (C) Masturbation;
 66 (D) Lewd exhibition of the genitals or pubic area of any ~~person~~ individual;
 67 (E) Flagellation or torture by or upon a ~~person~~ an individual who is nude;
 68 (F) Condition of being fettered, bound, or otherwise physically restrained on the part
 69 of a ~~person~~ an individual who is nude;
 70 (G) Physical contact in an act of apparent sexual stimulation or gratification with any
 71 ~~person's~~ individual's clothed or unclothed genitals, pubic area, or buttocks or with a
 72 female's clothed or unclothed breasts;
 73 (H) Defecation or urination for the purpose of sexual stimulation; or
 74 (I) Penetration of the vagina or rectum by any object except when done as part of a
 75 recognized medical procedure.

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

80 ~~(6)~~(11) 'Sexual exploitation' means conduct by any ~~person~~ individual who allows,
 81 permits, encourages, or requires ~~that~~ any child to engage in:

82 (A) Trafficking of persons for labor or sexual servitude, in violation of Code Section
 83 16-5-46;

84 ~~(A)~~(B) Prostitution, ~~as defined in violation of~~ Code Section 16-6-9; ~~or~~

85 (C) Obscene depiction of a minor, in violation of Code Section 16-11-40.1;

86 (D) Nude or sexually explicit electronic transmission, in violation of Code Section
 87 16-11-90; or

88 ~~(B)~~(E) Sexually explicit conduct for the purpose of producing any visual or print
 89 medium depicting such conduct, ~~as defined in violation of~~ Code Section 16-12-100.

90 (b) Each and every record concerning reports of child abuse and child controlled substance
 91 or marijuana abuse which is in the custody of the department, ~~or other state or local agency,~~
 92 or child advocacy center is declared to be confidential, and access thereto is prohibited
 93 except as provided in Code ~~Section~~ Sections 49-5-41 and ~~Code Section~~ 49-5-41.1.

94 (c) Each and every record concerning child abuse or neglect which is received by the
 95 department from the child abuse and neglect registry of any other state shall not be
 96 disclosed or used outside the department for any other purpose other than conducting
 97 background checks to be used in foster care and adoptive placements."

98

SECTION 3.

99 Said article is further amended in Code Section 49-5-41, relating to persons and agencies
 100 permitted access to records, by revising subsections (a) and (f) and by adding a new
 101 subsection to read as follows:

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

104 (1) Any federal, state, or local governmental entity, tribal entity, or any agency of any
 105 such entity, that has a need for information contained in such ~~reports~~ records in order to
 106 carry out its legal responsibilities to protect children from child abuse and neglect;

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

112 ~~(3)(2) A grand jury by subpoena upon its determination that access to such records is~~
 113 ~~necessary in the conduct of its official business;~~

114 ~~(4)(3) A prosecuting attorney in this state or any other state or political subdivision~~
 115 ~~thereof, or for the United States, The district attorney of any judicial circuit in this state,~~
 116 ~~a solicitor-general, or any assistant district attorney or assistant solicitor-general who may~~
 117 ~~seek such access in connection with official duty;~~

118 ~~(5)(4) Any adult who makes a report of suspected child abuse as required by Code~~
 119 ~~Section 19-7-5, but such access shall include only notification regarding the child~~
 120 ~~concerning whom the report was made, shall disclose only whether the investigation by~~
 121 ~~the department or governmental child protective agency of the reported abuse is ongoing~~
 122 ~~or completed and, if completed, whether child abuse was confirmed or unconfirmed, and~~
 123 ~~shall only be disclosed if requested by the person making the report;~~

124 ~~(5.1)(A) As used in this paragraph, the term:~~

125 ~~(i) 'Entity' means a child welfare agency providing protective services as designated~~
 126 ~~by the department, or in the absence of such agency, a law enforcement agency or~~
 127 ~~prosecuting attorney.~~

128 ~~(ii) 'School' shall have the same meaning as set forth in Code Section 19-7-5.~~

129 ~~(5)(A) Any entity that receives from a school employee a report of suspected child~~
 130 ~~abuse as required by Code Section 19-7-5.~~

131 ~~(B) Within 24 hours of a school employee making a report of suspected child abuse~~
 132 ~~pursuant to Code Section 19-7-5, the entity that received receiving such report, such~~
 133 ~~entity shall acknowledge, in writing, the receipt of such report to the reporting~~
 134 ~~individual. Within five days of completing the investigation of the suspected child~~

135 abuse, such entity shall disclose, in writing, to the school counselor for the school such
 136 child was attending at the time of the reported child abuse, ~~advising as to whether the~~
 137 suspected child abuse was confirmed or unconfirmed. If a school does not have a
 138 school counselor, such disclosure shall be made to the principal;.

139 (C) As used in this paragraph, the term:

140 (i) 'Entity' means a child welfare agency providing protective services as designated
 141 by the department, or in the absence of such agency, a law enforcement agency or
 142 prosecuting attorney.

143 (ii) 'School' shall have the same meaning as set forth in Code Section 19-7-5;

144 (6) Any adult requesting information regarding investigations by the department or a
 145 governmental child protective agency regarding the findings or information about the
 146 case of child abuse or neglect involving a fatality or near fatality; provided, however, that
 147 the following may be redacted from such records:

148 (A) Any record of law enforcement or prosecution agencies in any pending
 149 investigation or prosecution of criminal activity contained within the child abuse,
 150 neglect, or dependency records;

151 (B) Medical and mental health records made confidential by other provisions of law;

152 (C) Privileged communications of an attorney;

153 (D) The identifying information of a person who reported suspected child abuse;

154 (E) Information that may cause mental or physical harm to the sibling or other child
 155 living in the household of the child being investigated;

156 (F) The name of a child who is the subject of reported child abuse or neglect;

157 (G) The name of any parent or other person legally responsible for the child who is the
 158 subject of reported child abuse or neglect, provided that such person is not under
 159 investigation for the reported child abuse or neglect; and

160 (H) The name of any member of the household of the child who is the subject of
 161 reported child abuse or neglect, provided that such person is not under investigation for
 162 the reported child abuse or neglect;.

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

170 ~~(7.1)(8) A child advocacy center which is certified by the protocol committee, as such~~
 171 ~~term is defined in Code Section 19-15-1, for the county where the principal office of the~~

172 center is located as participating in the Children's Advocacy Centers of Georgia or a
 173 similar accreditation organization and which is operated for the purpose of investigation
 174 of known or suspected child abuse and treatment of a child or a family which is the
 175 subject of a report of abuse, and which has been created and supported through one or
 176 more intracommunity compacts between such advocacy center and one or more police
 177 agencies, the office of the district attorney, a legally mandated public or private child
 178 protective agency, a mental health board, and a community health service board;
 179 provided, however, that any child advocacy center which is granted access to records
 180 concerning reports of child abuse shall be subject to the confidentiality provisions of
 181 subsection (b) of Code Section 49-5-40 and shall be subject to the penalties imposed by
 182 Code Section 49-5-44 for authorizing or permitting unauthorized access to or use of such
 183 records that has a need for information contained in such records in order to carry out its
 184 legal responsibilities to protect children from child abuse or neglect;

185 ~~(8)~~(9) Police or any other law enforcement agency of this state or any other state or any
 186 medical examiner or coroner investigating a report of known or suspected child abuse or
 187 any review committee or protocol committee created pursuant to Chapter 15 of Title 19,
 188 it being found by the General Assembly that the disclosure of such information is
 189 necessary in order for such entities to carry out their legal responsibilities to protect
 190 children from child abuse and neglect, which protective actions include bringing criminal
 191 actions for such child abuse or neglect, and that such disclosure is therefore permissible
 192 and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse
 193 Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4); ~~and~~

194 ~~(9)~~(10) The Governor, the Attorney General, the Lieutenant Governor, or the Speaker
 195 of the House of Representatives when such officer makes a written request to the
 196 commissioner of the department which specifies the name of the child for ~~which~~ whom
 197 such access is sought and which describes such officer's need to have access to such
 198 records in order to determine whether the laws of this state are being complied with to
 199 protect children from child abuse and neglect and whether such laws need to be changed
 200 to enhance such protection, for which purposes the General Assembly finds such
 201 disclosure is permissible and encouraged under the 1992 amendments to Section
 202 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section
 203 5106(A)(b)(4); ~~and~~

204 (11) A court, by subpoena that is filed contemporaneously with a motion seeking records
 205 and requesting an in camera inspection of such records, may make such records available
 206 to a party seeking such records when:

207 (A) Such motion is filed;

208 (B) Such motion is served;

- 209 (i) On all parties to the action;
 210 (ii) On the department or other entity that has possession of such records, as
 211 applicable; and
 212 (iii) In matters other than a dependency proceeding or a civil proceeding wherein
 213 there is no related pending criminal investigation or prosecution of criminal or
 214 unlawful activity, on the prosecuting attorney, as applicable; and
 215 (C) After an in camera inspection of such records, the court finds that access to such
 216 records appears reasonably calculated to lead to the discovery of admissible evidence."
 217 "(f) Notwithstanding Code Section 49-5-40, a child who alleges that he or she was abused
 218 shall be permitted access to records concerning a report of child abuse allegedly committed
 219 against him or her which are in the custody of a child advocacy center, the department, or
 220 other state or local agency when he or she reaches 18 years of age; provided, however, that
 221 prior to such child reaching 18 years of age, if the requestor is not the subject of such ~~report~~
 222 record, such ~~reports~~ records shall be made available to such child's parent or legal guardian
 223 or a deceased child's duly appointed representative when the requestor or his or her
 224 attorney submits a sworn affidavit to the applicable child advocacy center, the department,
 225 or other state or local agency that attests that such information is relevant to a pending or
 226 proposed civil action relating to damages sustained by such child; and provided, further,
 227 that such ~~reports~~ record concerning a report of child abuse shall still be subject to
 228 confidentiality pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72. Such
 229 record concerning a report of child abuse shall not be subject to release under paragraph
 230 (11) of subsection (a) of this Code section or subsection (g) of this Code section.
 231 (g)(1) A subpoena authorized under paragraph (11) of subsection (a) of this Code section
 232 shall be served on the prosecuting attorney who has jurisdiction over a pending
 233 investigation or prosecution of criminal or unlawful activity, if such information is known
 234 to the individual seeking such access or disclosure.
 235 (2) A prosecuting attorney may intervene in an action involving a motion filed under
 236 paragraph (11) of subsection (a) of this Code section.
 237 (3)(A) When a court issues an order pursuant to paragraph (11) of subsection (a) of this
 238 Code section, the court shall issue a protective order to ensure the confidentiality of
 239 such records. Such protective order may make any order which justice requires to
 240 protect a party or person from annoyance, embarrassment, oppression, or undue burden
 241 or expense and may include one or more of the following:
 242 (i) That the records not be reproduced except as authorized by court order;
 243 (ii) That the records be viewed or disclosed only on specified terms and conditions;
 244 (iii) That the records be sealed and only opened by court order;

245 (iv) That the order be applicable to all parties, their counsel, and any agent or
246 representative of a party; or

247 (v) That records released pursuant to such order be returned to the court upon
248 completion of the matter that caused the production of such records.

249 (B) Any person who fails to obey a protective order issued under this subsection shall
250 be punished as contempt by the court."

251 **SECTION 4.**

252 Said article is further amended by revising Code Section 49-5-46, relating to the liability of
253 the department or agency, as follows:

254 "49-5-46.

255 The department, ~~an or any agency, a child advocacy center,~~ and employees ~~of either thereof~~
256 providing access to or disclosure of records or information as authorized by Code Section
257 49-5-41 shall have no civil liability or criminal liability responsibility therefor."

258 **SECTION 5.**

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