

The Senate Committee on Judiciary Non-Civil offered the following substitute to HB 905:

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 3 of Title 16, Title 19, and Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to justification and excuse, domestic relations, and programs and protection for children and youth, respectively, so as to change provisions relating to child abuse and the protection of children and youth; to provide for immunity from criminal liability for possession of certain materials or images under certain circumstances; to change and provide for defined terms; to change provisions relating to protocol committees on child abuse; to establish a public scorecard for child welfare agencies under the Department of Human Services; to define certain terms; to increase fines for certain offenses; to provide that the department shall coordinate contract and licensure compliance inspections for any affected agency or division including the Division of Family and Children Services, the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, and the Department of Community Health; to remove certain reporting requirements to the child abuse registry; to provide for related matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 3 of Title 16 of the Official Code of Georgia Annotated, relating to justification and excuse, is amended by adding a new Code section to read as follows:

"16-3-22.1.

(a) Any person that in good faith has possession of materials or images in violation of Article 3 of Chapter 12 of this title and immediately notifies law enforcement officials or any person that is required by Code Section 19-7-5 to report suspected child abuse, or makes such notification within 72 hours from the time there is reasonable cause to believe such person is in possession of such materials or images, shall be immune to the same extent as a law enforcement officer would be immune from criminal liability for such possession.

(b) The official report of the law enforcement agency or the Division of Family and Children Services of the Department of Human Services shall create a rebuttable presumption of good faith and reasonableness on the part of the person that has possession.

(c) The purpose of this Code section is to provide for those persons that act in good faith to assist law enforcement officers or the Division of Family and Children Services of the Department of Human Services when the health and safety of a child are being adversely affected and threatened by the conduct of another. This Code section shall be liberally construed so as to carry out the purposes thereof."

## SECTION 2.

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by revising subsection (b) of Code Section 19-7-5, relating to reporting of child abuse, as follows:

"(b) As used in this Code section, the term:

(1) 'Abortion' shall have the same meaning as set forth in Code Section 15-11-681.

(2) 'Abused' means subjected to child abuse.

(3) 'Child' means any person under 18 years of age.

(4) 'Child abuse' means:

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

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Endangering a child;

~~(C)(D)~~ Sexual abuse of a child; or

~~(D)(E)~~ Sexual exploitation of a child.

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

(5) 'Child service organization personnel' means persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children.

(6) 'Clergy' means ministers, priests, rabbis, imams, or similar functionaries, by whatever name called, of a bona fide religious organization.

(6.1) 'Endangering a child' means:

(A) Any act described by subsection (d) of Code Section 16-5-70;

(B) Any act described by Code Section 16-5-73;

(C) Any act described by subsection (l) of Code Section 40-6-391; or

(D) Prenatal abuse, as such term is defined in Code Section 15-11-2.

(7) 'Pregnancy resource center' means an organization or facility that:

(A) Provides pregnancy counseling or information as its primary purpose, either for a fee or as a free service;

(B) Does not provide or refer for abortions;

(C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

(D) Is not licensed or certified by the state or federal government to provide medical or health care services and is not otherwise bound to follow the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or federal laws relating to patient confidentiality.

(8) 'Reproductive health care facility' means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, or gynecological care and services.

(9) 'School' means any public or private pre-kindergarten, elementary school, secondary school, technical school, vocational school, college, university, or institution of postsecondary education.

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

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

~~'Sexual abuse'~~ Sexual abuse shall ~~not~~ include consensual sex acts ~~involving persons of the opposite sex~~ when the sex acts are between minors or if any individual is less than 14

years of age; provided, however, that it shall not include consensual sex acts when the sex acts are between a minor and an adult who is not more than ~~five~~ four years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

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

(A) Prostitution, as defined in Code Section 16-6-9; or

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

### SECTION 3.

Said title is further amended by revising Code Section 19-15-1, relating to definitions for child abuse, as follows:

"19-15-1.

As used in this chapter, the term:

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

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

(3) 'Child abuse' means:

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

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Sexual abuse of a child; or

(D) Sexual exploitation of a child.

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

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

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

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

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

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

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

(B) Has been approved by a protocol committee.

~~(4)~~(5) 'Child protection professional' means any person who is employed by the state or a political subdivision of the state as a law enforcement officer, school teacher, school administrator, or school counselor or who is employed to render services to children by the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or the Department of Human Services or any county board of health, community service board, or county department of family and children services.

~~(5) Reserved.~~

(6) 'Investigation' in the context of child death includes all of the following:

(A) A post-mortem examination which may be limited to an external examination or may include an autopsy;

(B) An inquiry by law enforcement agencies having jurisdiction into the circumstances of the death, including a scene investigation and interview with the child's parents, guardian, or caretaker and the person who reported the child's death; and

(C) A review of information regarding the child and family from relevant agencies, professionals, and providers of medical care.

(7) 'Panel' means the Georgia Child Fatality Review Panel established pursuant to Code Section 19-15-4.

(8) 'Protocol committee' means a multidisciplinary, multiagency committee established ~~for a county~~ pursuant to Code Section 19-15-2.

(9) 'Report' means a standardized form designated by the panel which is required for collecting data on child fatalities reviewed by local child fatality review committees.

(10) 'Review committee' means a multidisciplinary, multiagency child fatality review committee established for a county or circuit pursuant to Code Section 19-15-3.

(11) 'Sexual abuse' means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not ~~that~~ such person's spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

- (E) Flagellation or torture by or upon a person who is nude;
- (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
- (H) Defecation or urination for the purpose of sexual stimulation; or
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

~~'Sexual abuse'~~ Sexual abuse shall ~~not~~ include consensual sex acts ~~involving persons of the opposite sex~~ when the sex acts are between minors ~~or if any individual is less than 14 years of age; provided, however, that it shall not include consensual sex acts when the sex acts are~~ between a minor and an adult who is not more than ~~three~~ four years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(12) 'Sexual exploitation' means conduct by any person who allows, permits, encourages, or requires ~~that~~ a child to engage in:

- (A) Prostitution, as defined in Code Section 16-6-9; or
- (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100."

#### SECTION 4.

Said title is further amended by revising Code Section 19-5-2, relating to protocol committee on child abuse, as follows:

"19-15-2.

(a) ~~Each~~ Except as provided in paragraph (3) of subsection (b) of this Code section, each county shall be required to establish a protocol for the investigation and prosecution of alleged cases of child abuse as provided in this Code section.

(b)(1) The chief superior court judge of the circuit in which the county is located shall establish a protocol committee as provided in subsection (c) of this Code section and shall appoint an interim chairperson who shall preside over the first meeting, and the chief superior court judge shall appoint persons to fill any vacancies on the protocol committee.

(2) ~~After the establishment of a~~ Thus established, the protocol committee ~~shall thereafter,~~ the committee members shall elect a chairperson from ~~its~~ the protocol committee's membership. The protocol committee shall be charged with developing local protocols for the investigation and prosecution of alleged cases of child abuse.

(3) When a judicial circuit is composed of more than one county, the protocol committee shall determine if it shall be established for each county in the judicial circuit or if it will serve all of the counties within the judicial circuit.

(c)(1) Each of the following individuals, agencies, and entities shall designate a representative to serve on ~~the~~ a protocol committee established pursuant to paragraph (1) of subsection (b) of this Code section:

- (A) The sheriff;
- (B) The county department of family and children services;
- (C) The district attorney for the judicial circuit;
- (D) The presiding juvenile court judge;
- (E) The chief magistrate;
- (F) The county board of education;
- (G) The county mental health organization;
- (H) The chief of police of a county in counties which have a county police department;
- (I) The chief of police of the largest municipality in the county;
- (J) The county public health department, ~~which shall designate a physician to serve on the protocol committee;~~ and
- (K) The coroner or county medical examiner.

(2) Each of the following individuals, agencies, and entities shall designate a representative to serve on a protocol committee established pursuant to paragraph (3) of subsection (b) of this Code section:

- (A) The sheriff of each county in the judicial circuit;
- (B) The county department of family and children services of each county in the judicial circuit;
- (C) The district attorney for the judicial circuit;
- (D) The presiding juvenile court judge of each county in the judicial circuit;
- (E) The chief magistrate of each county in the judicial circuit;
- (F) Each board of education in the judicial circuit;
- (G) The county mental health organization of each county in the judicial circuit;
- (H) The chief of police of each county in the judicial circuit, if any;
- (I) The chief of police of the largest municipality in the judicial circuit;
- (J) The county public health department of each county in the judicial circuit; and
- (K) The coroner or county medical examiner of each county in the judicial circuit.

(3) A representative of a local child advocacy center shall serve on a protocol committee established under paragraph (1) or (3) of subsection (b) of this Code section if one exists in such location.

(4) A representative of a sexual assault center shall serve on a protocol committee established under paragraph (1) or (3) of subsection (b) of this Code section if one exists in such location.

~~(2)~~(5) In addition to the representatives serving on the protocol committee as provided for in ~~paragraph~~ paragraphs (1) through (4) of this subsection, the chief superior court judge shall designate a representative from a local citizen or advocacy group which focuses on child abuse awareness and prevention to serve on such protocol committee.

~~(3)~~(6) If any designated agency fails to carry out its duties relating to participation on the protocol committee, the chief superior court judge of the circuit may issue an order requiring the participation of such agency. Failure to comply with such order shall be cause for punishment as for contempt of court.

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

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

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

(g) Upon completion of the writing of the protocol, the protocol committee shall continue in existence and shall meet at least semiannually for the purpose of evaluating the effectiveness of the protocol and appropriately modifying and updating the same. The



protocol committee shall file the updated protocol with the Division of Family and Children Services of the Department of Human Services and the Office of the Child Advocate for the Protection of Children not later than the first day of September each year.

(h) Each protocol committee shall adopt or amend its written protocol to specify the circumstances under which law enforcement officers shall and shall not be required to accompany investigators from the county department of family and children services when these investigators investigate reports of child abuse. In determining when law enforcement officers shall and shall not accompany investigators, the protocol committee shall consider the need to protect the alleged victim and the need to preserve the confidentiality of the report. Each protocol committee shall establish joint work efforts between the law enforcement and investigative agencies in child abuse investigations. The adoption or amendment of the protocol shall also describe measures which can be taken within the county or circuit, as the case may be, to prevent child abuse and shall be filed with and furnished to the same entities with or to which an original protocol is required to be filed or furnished. The protocol shall be further amended to specify procedures to be adopted by the protocol committee to ensure that written protocol procedures are followed.

(i) The protocol committee shall issue a report no later than the first day of July each year. Such report shall evaluate the extent to which investigations of child abuse during the 12 months prior to the report have complied with the protocols of the protocol committee, recommend measures to improve compliance, and describe which measures taken within the county or circuit, as the case may be, to prevent child abuse have been successful. The report shall be transmitted to the county governing authority, the fall term grand jury of the judicial circuit, the ~~panel~~ Office of the Child Advocate for the Protection of Children, and the chief superior court judge of the circuit.

(j) Each member of each protocol committee shall receive appropriate training within 12 months after his or her appointment. The Office of the Child Advocate for the Protection of Children shall provide such training.

(k) The protocol committee shall ~~adopt~~ include a written sexual abuse and sexual exploitation section within its protocol which shall be filed with the Division of Family and Children Services of the Department of Human Services and the Office of the Child Advocate for the Protection of Children, a copy of which shall be furnished to each agency in the county handling the cases of sexually abused or exploited children. The sexual abuse and sexual exploitation section of the protocol shall be a written document outlining outline in detail the procedures to be used in investigating and prosecuting cases arising from alleged sexual abuse and sexual exploitation and the procedures to be followed concerning the obtainment of and payment for sexual assault examinations. ~~Each protocol committee shall adopt or amend its written sexual abuse and sexual exploitation protocol.~~ The sexual

abuse and sexual exploitation ~~section of the protocol adopted~~ shall be consistent with the policies and procedures of the Division of Family and Children Services of the Department of Human Services. ~~A~~ The sexual abuse and sexual exploitation section of the protocol is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Such section of the protocol shall not limit or otherwise restrict a prosecuting attorney in the exercise of his or her discretion nor in the exercise of any otherwise lawful litigative prerogatives."

## SECTION 5.

Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to programs and protection for children and youth, is amended by adding a new Code section to read as follows:

"49-5-4.1.

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

(1) 'Affected agency' means any state agency, department, division, or office which requires a license or commission from the department for child welfare agencies, including, but not limited to, the Division of Family and Children Services, Department of Human Services, Department of Juvenile Justice, Department of Behavioral Health and Developmental Disabilities, or Department of Community Health.

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

(3) 'Services' means direct care, treatment, custodial responsibilities, or any combination thereof provided for children.

(b) The Department of Human Services, in conjunction with other affected agencies and representatives of child welfare agencies, shall establish a child welfare agency public scorecard to score child welfare agencies. Affected agencies shall cooperate with the department to develop and establish the child welfare agency public scorecard.

(c) The public scorecard for child welfare agencies and any explanation for the basis of any score on the scorecard shall be published in a single location on a website for public review. Such website shall provide scores for each child welfare agency by the affected agency that is responsible for the regulation of or contracting with each particular child welfare agency. The score shall be posted within 30 days of the completion of an inspection or, if appealed pursuant to subsection (e) of this Code section, the revised score, if any, shall be posted within 30 days of the conclusion of the appeal.

(d) The scores shall be based on an established published formula with weight appropriately given for each agency's compliance or noncompliance with applicable laws; rules; contracts; court orders; measures of treatment; behavioral, vocational, and

educational outcomes for persons receiving services; and other pertinent information, based on empirical evidence to the greatest extent possible.

(e) The department shall provide child welfare agencies with advanced written notice of the scores to be posted. A child welfare agency may contest a score in accordance with department rules by filing a written appeal with the department within ten days from receipt of such notice. If a child welfare agency contests such score, the department shall note on the website that the score is under appeal, until such appeal is concluded. Within ten days of receipt of a child welfare agency's written contest of a score, the department shall hold a meeting with the child welfare agency and any affected agency whose score is contested. The meeting shall be for the parties to discuss the score and basis for the score. Within 30 days after the meeting, the commissioner's designee shall issue written notice confirming or revising the score. After issuance of such written notice, the child welfare agency may contest the score as a contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at such hearing.

(f) In consultation with other affected agencies, the department shall promulgate rules and regulations consistent with this Code section, including establishing criteria which must be met in order for a child welfare agency to contest or appeal a score.

(g) Nothing in this Code section shall be construed to affect the ability of any affected agency, in its sole discretion, to contract with any child welfare agency or to exercise the rights of the affected agency under the terms and conditions of any existing contract with a child welfare agency."

## **SECTION 6.**

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

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

(q) No person, official, agency, hospital, maternity home, or institution, public or private, in this state shall receive or accept a child under 17 years of age for placement or adoption or place such a child, either temporarily or permanently, in a home other than the home of

the child's relatives without having been licensed or commissioned by the department. Notwithstanding the provisions of Code Section 49-5-12.1, violation of this subsection shall be punishable by a fine of not less than ~~\$100.00~~ \$500.00 nor exceeding ~~\$500.00~~ \$1,000.00 for each offense. Nothing in this Code section shall be construed to prohibit a properly licensed attorney at law from providing necessary legal services and counsel to parties engaged in or contemplating adoption proceedings. Nothing in this Code section shall be construed to prohibit an individual seeking to:

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

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

#### SECTION 7.

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

"49-5-12.3.

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

(1) 'Affected agency' means any state agency, department, division, or office which requires a license or commission from the department for child welfare agencies, including, but not limited to, the Division of Family and Children Services, the Department of Juvenile Justice, the Department of Behavioral Health and Developmental Disabilities, or the Department of Community Health.

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

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

(4) 'Contract compliance' means adherence to the terms of a contract a child welfare agency has with an affected agency to provide child welfare services.

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

(b) The department shall ensure that the annual inspection of each child welfare agency is performed by all affected agencies in a singular coordinated manner. Affected agencies shall not duplicate the annual inspection but shall cooperate and assist the department with

the annual inspection. Affected agencies shall share the results of annual inspection with other applicable affected agencies.

(c) The annual inspection shall not occur sooner than 330 days or later than 390 days after the date on which the last annual inspection began and shall not exceed five days. Affected agencies may reduce the extent of the annual inspection by reducing the frequency or the extent of the inspection for contract compliance when the child welfare agency has shown an exceptional history of contract compliance as determined upon past scores; provided, however, that such reduction does not violate federal law, court order, or settlement agreement.

(d) A child welfare agency may contest the results of an annual inspection, in accordance with department rules, by filing a written appeal with the affected agency within ten days of receipt of the affected agency's annual inspection report. Within ten days of receipt of a child welfare agency's written appeal of the annual inspection, the affected agency shall hold a meeting with the child welfare agency. The meeting shall be for the parties to discuss the annual inspection.

(e) The annual inspection shall not limit the ability of affected agencies and other state departments, divisions, and agencies to ensure the safety and well-being of children in the care of child welfare agencies or to inspect, investigate, or respond as required by court order, settlement agreement, or federal law.

(f) In consultation with other affected agencies, the department shall promulgate rules and regulations consistent with this Code section, including establishing criteria which must be met in order for a child welfare agency to contest or appeal an evaluation.

(g) Nothing in this Code section shall be construed to affect the ability of any affected agency, in its sole discretion, to contract with any child welfare agency or to exercise the rights of the affected agency under the terms and conditions of any existing contract with a child welfare agency."

## SECTION 8.

Said chapter is further amended by revising Article 8, relating to the central child abuse registry, as follows:

## "ARTICLE 8

49-5-180.

As used in this article, the term:

(1) 'Abuse investigator' means the division, any county or district department of family and children services, or any designee thereof.

(2) 'Alleged child abuser' means ~~a person~~ an individual named in an abuse investigator's report as having committed a substantiated case.

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

(4) 'Child abuse' ~~has~~ shall have the same meaning as in paragraph (4) of subsection (b) of Code Section 19-7-5.

~~(5) 'Child abuse crime' means:~~

~~(A) A violation of Article 1 or Article 2 of Chapter 5 of Title 16 or subsections (b) or (c) of Code Section 16-5-70, in which physical injury or death is inflicted on a minor child by a parent or caretaker thereof by other than accidental means;~~

~~(B) A violation of Code Section 16-12-1 regarding a minor child by a parent or caretaker thereof;~~

~~(C) A violation of Chapter 6 of Title 16 in which the victim is a minor;~~

~~(D) A violation of Part 2 of Article 3 of Chapter 12 of Title 16; or~~

~~(E) Any other crime that, in the discretion of the prosecuting attorney, constitutes child abuse.~~

~~(6)~~(5) 'Child abuse registry' means the Child Protective Services Information System.

~~(7) 'Convicted' means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought. Such term also includes having been arrested, charged, and sentenced for the commission of a child abuse crime for which:~~

~~(A) A plea of nolo contendere was entered to the charge; or~~

~~(B) First offender treatment without adjudication of guilt pursuant to the charge was granted. The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime.~~

~~(8) 'Convicted child abuser' means a person who is convicted.~~

~~(9)~~(6) 'Division' means the Division of Family and Children Services of the department.

~~(10)~~(7) 'Out-of-state abuse investigator' means a public child protective agency or law enforcement agency of any other state bound by confidentiality requirements as to information obtained under this article which are similar to those provided in this article.

~~(11)~~(8) 'Sexual abuse' ~~has~~ shall have the same meaning as in paragraph (10) of subsection (b) of Code Section 19-7-5.

~~(12)~~(9) 'Sexual exploitation' ~~has~~ shall have the same meaning as in paragraph (11) of subsection (b) of Code Section 19-7-5.

~~(13)~~(10) 'Substantiated case' means an investigation of a child abuse report by an abuse investigator which has been confirmed based upon a preponderance of the evidence that child abuse has occurred.

49-5-181.

(a) The division shall establish and maintain a central child abuse registry which shall be known as the 'Child Protective Services Information System.' The child abuse registry shall receive notice regarding:

~~(1) Substantiated~~ substantiated cases occurring on and after July 1, 2016, reported to the division pursuant to ~~subsection (a) of~~ Code Section 49-5-182; and

~~(2) Convicted child abusers on and after July 1, 2016, reported to the division pursuant to subsection (b) of~~ Code Section 49-5-182.

(b) The child abuse registry shall be operated in such a manner as to enable abuse investigators to:

(1) Immediately identify and locate substantiated cases ~~and convicted child abusers~~; and

(2) Maintain and produce aggregate statistical data of substantiated cases ~~and cases of child abuse in which a person was convicted.~~

49-5-182.

~~(a)~~ An abuse investigator who completes the investigation of a child abuse report made pursuant to Code Section 19-7-5 or otherwise and determines that it is a substantiated case if the alleged child abuser was at least 13 years of age at the time of the commission of the act shall notify the division within 30 business days following such determination. Such notice may be submitted electronically and shall include the following:

(1) Name, age, sex, race, social security number, if known, and birthdate of the child alleged to have been abused;

(2) Name, age, sex, race, social security number, and birthdate of the parents, custodian, or caretaker of the child alleged to have been abused, if known;

(3) Name, age, sex, race, social security number, and birthdate of the person who committed the substantiated case; and

(4) A summary of the known details of the child abuse which at a minimum shall contain the classification of the abuse as provided in paragraph (4) of subsection (b) of Code Section 19-7-5 as either sexual abuse, physical abuse, child neglect, or a combination thereof.

~~(b) Upon receipt of a sentence for a convicted child abuser, the prosecuting attorney shall notify the division within 30 business days following such receipt. Such notice may be submitted electronically and shall include the following:~~

~~(1) A certified copy of the sentence;~~

~~(2) A complete history of the conviction, including a certified copy of the indictment, accusation, or both and such other information as the division may require;~~

~~(3) Name, age, sex, race, social security number, and birthdate of the victim of child abuse by the convicted child abuser, if known; and~~  
~~(4) Name, age, sex, race, social security number, and birthdate of the parents, custodian, or caretaker of the victim of child abuse by the convicted child abuser, if known.~~

49-5-183.

(a) Upon receipt of an investigator's report of a substantiated case pursuant to ~~subsection (a) of~~ Code Section 49-5-182 naming an alleged child abuser, the division:

(1) Shall include in the child abuse registry the name of the alleged child abuser, the classification of the abuse as provided in paragraph (4) ~~of subsection (a) of~~ Code Section 49-5-182, and a copy of the investigator's report; and

(2) Shall mail to such alleged child abuser in such report a notice regarding the substantiated case via certified mail, return receipt requested. It shall be a rebuttable presumption that any such notice has been received if the return receipt has been received by the division. The notice shall further inform such alleged child abuser of ~~such person's~~ his or her right to a hearing to appeal such determination. The notice shall further inform such alleged child abuser of the procedures for obtaining the hearing and that an opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved.

(b) Any alleged child abuser who has not attained the age of majority set forth by Code Section 39-1-1 at the time of the hearing requested pursuant to subsection (d) of this Code section shall be entitled to representation at the hearing either by the alleged child abuser's parent or other legal guardian or by an attorney employed by such parent or guardian. In the event the administrative law judge conducting the hearing determines that any such alleged minor child abuser will not be so represented at the hearing, or that the interests of any such alleged minor child abuser may conflict with the interests of the alleged minor child abuser's parent or other legal guardian, the administrative law judge shall order the division to apply to the superior court of the county in which the alleged act of child abuse was committed to have counsel appointed for the alleged minor child abuser. Payment for any such court appointed representation shall be made by such county.

(c) In order to exercise such right to a hearing, the alleged child abuser ~~must~~ shall file a written request for a hearing with the division within ten days after receipt of such notice. The written request shall contain the alleged child abuser's current residence address and, if ~~the person~~ he or she has a telephone, a telephone number at which ~~such person~~ he or she may be notified of the hearing.

(d) If the division receives a timely written request for a hearing under subsection (c) of this Code section, it shall transmit that request to the Office of State Administrative



Hearings within ten days after such receipt. Notwithstanding any other provision of law, the Office of State Administrative Hearings shall conduct a hearing upon that request in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules of the Office of State Administrative Hearings adopted pursuant thereto, except as otherwise provided in this article. The hearing shall be for the purpose of an administrative determination regarding whether, based on a preponderance of evidence, there was child abuse committed by the alleged child abuser to justify the investigator's determination of a substantiated case. The Office of State Administrative Hearings shall give notice of the time and place of the hearing to the alleged child abuser by first-class mail to the address specified in the written request for a hearing and to the division by first-class mail at least ten days prior to the date of the hearing. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the correct address of the alleged child abuser and the division, respectively, and proper postage affixed. Unless postponed by mutual consent of the parties and the administrative law judge or for good cause shown, ~~that~~ such hearing shall be held within 30 business days following receipt by the Office of State Administrative Hearings of the request for a hearing, and a decision shall be rendered within five business days following such hearing. A motion for an expedited hearing may be filed in accordance with rules and regulations promulgated by the Office of State Administrative Hearings. The hearing may be continued as necessary to allow the appointment of counsel. A telephone hearing may be conducted concerning this matter in accordance with standards prescribed in paragraph (5) of Code Section 50-13-15. Upon the request of any party to the proceeding or the assigned administrative law judge, venue may be transferred to any location within ~~the~~ this state if all parties and the administrative law judge consent to such a change of venue. Otherwise, the hearing shall be conducted in the county in which the alleged act of child abuse was committed. The doctrines of collateral estoppel and res judicata as applied in judicial proceedings are applicable to the administrative hearings held pursuant to this article.

(e) At the conclusion of the hearing under subsection (d) of this Code section, upon a finding that there is not a preponderance of evidence to conclude that the alleged child abuser committed an act of child abuse, the administrative law judge shall order that the alleged child abuser's name be removed from the child abuse registry. The general public shall be excluded from hearings of the Office of State Administrative Hearings held pursuant to this article, and the files and records relating thereto shall be confidential and not subject to public inspection.

(f) Notwithstanding any other provision of law, the decision of the administrative law judge under subsection (e) of this Code section shall constitute the final administrative

604 decision. Any party shall have the right of judicial review of such decision in accordance  
605 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that the  
606 petition for review shall be filed within ten days after such decision and may only be filed  
607 with and the decision appealed to the superior court of the county where the hearing took  
608 place or, if the hearing was conducted by telephone, the Superior Court of Fulton County.  
609 The procedures for such appeal shall be substantially the same as those for judicial review  
610 of contested cases under Code Section 50-13-19 except that the filing of a petition for  
611 judicial review stays the listing of the petitioner's name upon the child abuse registry, and  
612 the superior court shall conduct the review and render its decision thereon within 30 days  
613 following the filing of the petition. The review and records thereof shall be closed to the  
614 public and not subject to public inspection.

615 (g) The administrative law judge shall transmit to the division his or her decision regarding  
616 the alleged child abuser and the investigator's report regarding such individual within ten  
617 days following that decision unless a petition for judicial review of that decision is filed  
618 within the permitted time period. If a timely petition for judicial review is filed within the  
619 permitted time period, the superior court shall transmit to the division its decision regarding  
620 the alleged child abuser and the investigator's report regarding such individual within ten  
621 days following that decision.

622 (h) With regard to a minor child alleged to have committed abuse, the division shall  
623 remove such individual's name from the registry if:

624 (1) He or she has reached 18 years of age;

625 (2) More than one year has passed from the date of the act or omission that resulted in  
626 a substantiated case and there have been no subsequent acts or omissions resulting in a  
627 substantiated case; and

628 (3) He or she can prove by a preponderance of the evidence that he or she has been  
629 rehabilitated.

630 49-5-184.

631 ~~(a) Upon receipt of a notice from a prosecuting attorney pursuant to subsection (b) of Code~~  
632 ~~Section 49-5-182, the division shall include in the child abuse registry the name of the~~  
633 ~~convicted child abuser, the offense for which he or she was convicted, and whether the~~  
634 ~~offense is considered physical abuse, neglect or exploitation, sexual abuse, or sexual~~  
635 ~~exploitation.~~

636 ~~(b)(a) An individual~~ Any person whose name appears in the child abuse registry as a  
637 ~~convicted child abuser~~ having committed a substantiated case shall be entitled to a hearing  
638 for an administrative determination of whether or not expungement of such person's  
639 individual's name should be ordered. In order to exercise such right, the ~~person must~~

individual shall file a written request for a hearing with the division. The provisions of this subsection shall not apply to ~~persons~~ individuals who have waived ~~their~~ a hearing after receipt of notice.

~~(e)~~(b) Upon receipt by the division of a written request for a hearing pursuant to subsection ~~(b)~~ (a) of this Code section, the division shall transmit such request to the Office of State Administrative Hearings within ten days of receipt. The Office of State Administrative Hearings shall conduct a hearing in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except as otherwise provided in this Code section. A hearing shall be conducted within 60 days following receipt of the request by the Office of State Administrative Hearings. Upon a finding that there is no credible evidence that the ~~person~~ individual who requested the hearing ~~is a convicted child abuser~~ is the individual who had a substantiated case, the Office of State Administrative Hearings shall order the division to expunge that name from the registry. The general public shall be excluded from such hearings and the files and records relating thereto shall be confidential and not subject to public inspection.

~~(d)~~(c) Notwithstanding any other provision of law, the decision of the Office of State Administrative Hearings pursuant to subsection ~~(e)~~ (b) of this Code section shall constitute the final agency decision. Any party shall have the right of judicial review of that decision in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that the petition for review shall be filed within 30 days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be the same as those for judicial review of contested cases under Code Section 50-13-19. The review and records thereof shall be closed to the public and not subject to public inspection.

49-5-185.

(a) Except as otherwise authorized in subsection (c) of this Code section and subsection (b) of Code Section 49-5-186, the only persons or entities ~~who~~ that may access or be provided any information from the child abuse registry are:

(1) An abuse investigator who has investigated or is investigating a case of possible child abuse and who shall only be provided information relating to ~~that~~ such case for purposes of using ~~that~~ such information in such investigation;

(2) State or other government agencies of this state or any other state which license entities that have interactions with children or are responsible for providing care for children or licensed entities in this state which interact with children or are responsible

for providing care for children and which shall only be provided information for purposes of licensing or employment of a specific individual;

(3) A licensing entity, which may disclose information from the child abuse registry in a written notice to an applicant or licensed entity whose license is denied or revoked as a result of information found in the registry, to the extent that such information is required in such notice by a federal or state law, regulation, or policy; or in a proceeding arising from an adverse action taken against a licensed entity or individual as a result of information found in the registry; and

(4) The Department of Early Care and Learning, which is authorized to disclose all or a portion of the information from the child abuse registry used to determine that a records check is unsatisfactory or to rescind a determination that a records check is satisfactory to an individual who has submitted a records check application or whose satisfactory records check determination has been rescinded in accordance with Article 2 of Chapter 1A of Title 20; and

(5) An affiliate court appointed special advocate program, as such term is defined in Code Section 15-11-2, which information shall be provided and used solely for the purpose of screening and selecting employees and volunteers of such affiliate court appointed special advocate program and screening and selecting individuals to serve as a CASA, as such term is defined in Code Section 15-11-2.

(b) The division shall provide the Governor's office, the General Assembly, district attorneys, and law enforcement agencies with a statistical analysis of substantiated cases of child abuse ~~and convicted child abusers~~ entered into the child abuse registry at the end of each calendar year. This analysis shall not include the names of any children, parents, or persons associated with the child abuse. This analysis shall not be protected by any laws prohibiting the dissemination of confidential information.

(c) ~~A person~~ An individual may make a written request to the division to find out whether ~~such person's~~ his or her name is included in the child abuse registry. Upon presentation of a passport, military identification card, driver's license, or identification card authorized under Code Sections 40-5-100 through 40-5-104, the office receiving such request shall disclose to such ~~person~~ individual whether his or her name is included in the child abuse registry and, if so, the date upon which his or her name was listed in the registry ~~and the substantiated case or child abuse crime for which such person was convicted.~~

(d) The division shall provide persons and entities authorized in subsection (a) of this Code section with access to or information from the child abuse registry sufficient to meet the requirements prescribed by Congress as conditions to federal funding for programs administered by such ~~entities or persons~~ or entities.

49-5-186.

(a) Information in the child abuse registry shall be confidential and shall not be subject to Article 4 of Chapter 18 of Title 50, and access thereto is prohibited except as provided in this article. Such information shall not be deemed to be a record of child abuse for purposes of Article 2 of this chapter.

(b)(1) Information obtained from the child abuse registry shall not be made a part of any record which is open to the public except as provided in paragraph (2) of this subsection; provided, however, that a district attorney may use such information in any court proceeding in the course of any criminal prosecution, if such information is otherwise admissible.

(2) Notwithstanding any other provisions of law, information in the child abuse registry applicable to a child who at the time of his or her death was in the custody of a state department or agency or foster parent, which information relates to the child while in the custody of such state department or agency or foster parent, shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50.

(c) Any person who knowingly provides any information from the child abuse registry to a person not authorized to be provided such information under this article shall be guilty of a misdemeanor.

(d) Any person who knowingly and under false pretense obtains or attempts to obtain information which was obtained from the child abuse registry, except as authorized in this article, shall be guilty of a misdemeanor.

49-5-187.

The division and other authorized agencies, entities, and persons and the employees thereof providing information from the child abuse registry as authorized by this article and any person who uses such information shall have no civil liability or criminal responsibility therefor."

#### **SECTION 9.**

(a) This Act shall become effective on July 1, 2016, except as otherwise provided in subsection (b) of this section.

(b) Section 5 of this Act shall become effective on March 1, 2017.

#### **SECTION 10.**

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