

House Bill 478

By: Representative Ballinger of the 23rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 8 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated,
2 relating to the central child abuse registry, so as to provide improvements to the operation
3 of the child abuse registry; to provide definitions; to provide for notice of abuse allegations;
4 to provide for reporting abuse cases to DFACS office; to provide for hearing on
5 expungement of name from registry; to provide for related matters; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 8 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to the
10 child abuse registry, is amended by revising paragraphs (4), (8), and (9) of Code Section
11 49-5-180, relating to definitions, as follows:

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

14 "(8) 'Sexual abuse' shall have the same meaning as set forth in ~~paragraph (10)~~ of
15 subsection (b) of Code Section 19-7-5.

16 (9) 'Sexual exploitation' shall have the same meaning as set forth in ~~paragraph (11)~~ of
17 subsection (b) of Code Section 19-7-5."

18 **SECTION 2.**

19 Said article is further amended by revising Code Section 49-5-182, relating to notice to
20 division of substantiated case resulting from investigation by abuse investigator, as follows:

21 "49-5-182.

22 An abuse investigator who completes the investigation of a child abuse report made
23 pursuant to Code Section 19-7-5 or otherwise and determines that it is a substantiated case
24 if the alleged child abuser was at least ~~13~~ 18 years of age at the time of the commission of

25 the act shall notify the division within 30 ~~business~~ days following such determination. Such
 26 notice may be submitted electronically and shall include the following:

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

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

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

33 (4) The date the child abuse occurred;

34 (5) The date the child abuse was reported; and

35 ~~(4)(6)~~ A summary of the known details of the child abuse which at a minimum shall
 36 contain the classification and type of the abuse ~~as provided in paragraph (4) of subsection~~
 37 ~~(b) of Code Section 19-7-5 as either sexual abuse, physical abuse, child neglect, or a~~
 38 ~~combination thereof."~~

39 SECTION 3.

40 Said article is further amended by revising Code Section 49-5-183, relating to division to
 41 update registry upon notification of substantiated case, notice to alleged abuser,
 42 representation of alleged minor child abuser, and hearing on expungement of name from
 43 registry, as follows:

44 "49-5-183.

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

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

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

58 (1) State that an abuse investigator has investigated a report of child abuse and has found
 59 by a preponderance of the evidence that such alleged child abuser committed an act of
 60 child abuse;

61 (2) State that the name of such alleged child abuser and a copy of the investigator's report
 62 shall be included in the child abuse registry, unless a hearing to dispute the investigator's
 63 determination is requested within 30 days of receipt of the notice;

64 (3) Include:

65 (A) The name of the alleged child abuser;

66 (B) The name of the child alleged to have been abused;

67 (C) The date the child abuse occurred;

68 (D) The date the child abuse was reported;

69 (E) A copy of the investigator's report; and

70 (F) A summary of the known details of the child abuse which at a minimum shall
 71 contain the classification and type of the abuse; and

72 (4) Advise such alleged child abuser of:

73 (A) The right to request a hearing to dispute the investigator's determination that he or
 74 she committed an act of child abuse;

75 (B) The procedure and time frame in which to request a hearing for such dispute;

76 (C) The right to be represented by an attorney of his or her choice at the hearing and
 77 to present evidence on the issues involved;

78 (D) The consequences of being named in the child abuse registry, including the effect
 79 on employment opportunity and professional licensure; and

80 (E) The opportunity to request expungement and the details for that procedure.

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

92 ~~(c)~~(b) In order to exercise such right to a hearing, the alleged child abuser shall file a
 93 written request for a hearing with the division within ~~ten~~ 30 days after receipt of such
 94 notice. The written request shall contain ~~the~~ such alleged child abuser's current residence
 95 address and, if he or she has a telephone, a telephone number at which he or she may be
 96 notified of the hearing. It shall be the responsibility of such alleged child abuser requesting

97 such hearing to inform the division and the Office of State Administrative Hearings of any
98 subsequent change in address or telephone number.

99 (c) After the expiration of the period to request a hearing pursuant to subsection (b) of this
100 Code section, if the division has not received such request, it shall include in the child
101 abuse registry the name of the alleged child abuser, the classification and type of the abuse,
102 and a copy of the investigator's report.

103 (d)(1) If the division receives a timely written request for a hearing under subsection (c)
104 (b) of this Code section, it shall transmit that such request to the Office of State
105 Administrative Hearings and the office of the district attorney for the judicial circuit in
106 which the child abuse was committed within ten days after such receipt.

107 (2)(A) For purposes of this paragraph, the term 'final disposition of the criminal
108 prosecution' shall mean the dismissal of the criminal charges or entry of judgment and
109 the resolution of any direct appeal taken thereon.

110 (B) The prosecuting attorney with jurisdiction over the criminal prosecution of any
111 child abuse charges may file a motion requesting postponement of the hearing if in such
112 attorney's opinion conducting such hearing will impact the ability to prosecute the
113 criminal case. Such motion shall be filed within 20 days after the office of the district
114 attorney receives the written request for a hearing. Upon such motion, the hearing shall
115 be stayed by order of the administrative law judge until final disposition of the criminal
116 prosecution.

117 (C) Within 30 days of the final disposition of the criminal prosecution, the prosecuting
118 attorney shall notify the Office of State Administrative Hearings, the division, and the
119 alleged child abuser of such disposition. Within 30 days following receipt by the Office
120 of State Administrative Hearings of such notification, the administrative law judge shall
121 conduct a hearing in accordance with this subsection.

122 (D) When an order staying a hearing is granted, at least once every three years from
123 the date of such order, until final disposition of the criminal prosecution, the
124 prosecuting attorney shall notify the Office of State Administrative Hearings, the
125 division, and the alleged child abuser that there has not been a final disposition of the
126 criminal prosecution. If the Office of State Administrative Hearings does not receive
127 timely notification from the prosecuting attorney, the administrative law judge shall
128 conduct a hearing in accordance with this subsection.

129 (3) Notwithstanding any other provision of law, the Office of State Administrative
130 Hearings shall conduct a hearing upon that the request of the alleged child abuser in
131 accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and
132 the rules of the Office of State Administrative Hearings adopted pursuant thereto, except
133 as otherwise provided in this article.

134 (4) The hearing shall be for the purpose of an administrative determination regarding
 135 whether, based on a preponderance of evidence, there was child abuse committed by the
 136 alleged child abuser ~~to justify the investigator's determination of a substantiated case.~~

137 (5) The Office of State Administrative Hearings shall give notice of the time and place
 138 of the hearing by first-class mail at least 15 days prior to the date of the hearing to the
 139 alleged child abuser ~~by first-class mail~~ to the address specified in ~~the~~ his or her written
 140 request for a hearing, ~~and to the division by first-class mail at least ten days prior to the~~
 141 ~~date of the hearing, and to the office of the district attorney for the judicial circuit in~~
 142 which the alleged act of child abuse was committed. It shall be a rebuttable presumption
 143 that any such notice is received five days after deposit in the United States mail with the
 144 correct address of the alleged child abuser, ~~and the division, and the district attorney,~~
 145 respectively, and proper postage affixed.

146 (6) Unless postponed by mutual consent of the ~~parties~~ alleged child abuser, the division,
 147 and the administrative law judge or for good cause shown, such hearing shall be held
 148 within 30 ~~business~~ days ~~following receipt by~~ of the Office of State Administrative
 149 Hearings ~~of receiving~~ the request for a hearing, ~~and a decision shall be rendered within~~
 150 ~~five business days following such hearing.~~

151 (7) A motion for an expedited hearing may be filed in accordance with rules and
 152 regulations promulgated by the Office of State Administrative Hearings.

153 (8) The hearing may be continued as necessary to allow the ~~appointment~~ retention of
 154 counsel.

155 (9) A telephone hearing may be conducted ~~concerning this matter~~ in accordance with
 156 standards prescribed in paragraph (5) of Code Section 50-13-15.

157 (10) Upon the request of ~~any party to the proceeding~~ the alleged child abuser, the
 158 division, or the assigned administrative law judge, venue may be transferred to any
 159 location within this state if ~~all parties~~ the alleged child abuser, the division, and the
 160 administrative law judge consent to such a change of venue. Otherwise, the hearing shall
 161 be conducted in the county in which the alleged act of child abuse was committed or a
 162 suitable location no farther than 50 miles from such county.

163 (11) The doctrines of collateral estoppel and res judicata as applied in judicial
 164 proceedings ~~are~~ shall be applicable to the administrative hearings held pursuant to this
 165 article.

166 (12) Code Section 49-5-41, relating to access to records concerning reports of child
 167 abuse, shall be applicable to the administrative hearings held pursuant to this subsection.

168 (e) At the conclusion of the hearing under subsection (d) of this Code section, upon a
 169 finding that there is not a preponderance of evidence to conclude that the alleged child
 170 abuser committed an act of child abuse, the administrative law judge shall order that ~~the~~

171 ~~such~~ alleged child abuser's name be ~~removed from~~ included in the child abuse registry;
 172 provided, however, that if the evidence was insufficient, the judge shall issue an order to
 173 that effect. Such order shall be issued and transmitted to the alleged child abuser within
 174 five days after the conclusion of the hearing. The general public shall be excluded from
 175 hearings of the Office of State Administrative Hearings held pursuant to this article,
 176 provided that a prosecuting attorney for the jurisdiction in which the alleged act of child
 177 abuse was committed or his or her staff may attend such hearings, and the files and records
 178 relating thereto shall be confidential and not subject to public inspection.

179 (f) Notwithstanding any other provision of law, the decision of the administrative law
 180 judge under subsection (e) of this Code section shall constitute the final administrative
 181 decision. ~~Any party~~ The alleged child abuser and the division shall have the right of
 182 judicial review of such decision in accordance with Chapter 13 of Title 50, the "Georgia
 183 Administrative Procedure Act," except that the petition for review shall be filed within ~~ten~~
 184 30 days after such decision and ~~may~~ shall only be filed with and the decision appealed to
 185 the superior court of the county where the hearing took place or, if the hearing was
 186 conducted by telephone, the Superior Court of Fulton County. The procedures for such
 187 appeal shall be substantially the same as those for judicial review of contested cases under
 188 Code Section 50-13-19 except that the filing of a petition for judicial review ~~stays~~ shall stay
 189 the listing of the ~~petitioner's~~ alleged child abuser's name upon the child abuse registry, and
 190 the superior court shall conduct the review and render its decision thereon within 30 days
 191 following the filing of the petition. The review and records thereof shall be closed to the
 192 public and not subject to public inspection.

193 (g) ~~The~~ Within ten days after the expiration of the period to seek judicial review by a
 194 superior court, if no review is sought, the administrative law judge shall transmit to the
 195 division his or her ~~decision~~ order regarding the alleged child abuser and the investigator's
 196 report ~~regarding such individual within ten days following that decision unless a petition~~
 197 ~~for judicial review of that decision is filed within the permitted time period.~~ If a timely
 198 petition for judicial review is filed ~~within the permitted time period,~~ the superior court shall
 199 transmit to the division its decision regarding the alleged child abuser and the investigator's
 200 report ~~regarding such individual within ten days following that~~ such decision. The division
 201 shall not include an alleged child abuser's name in the child abuse registry until the
 202 exhaustion of such alleged child abuser's appellate rights. When the division includes a
 203 name in the child abuse registry, it shall be accompanied by the classification and type of
 204 abuse and a copy of the investigator's report.

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

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

208 ~~(2) More than one year has passed from the date of the act or omission that resulted in~~
 209 ~~a substantiated case and there have been no subsequent acts or omissions resulting in a~~
 210 ~~substantiated case, and~~
 211 ~~(3) He or she can prove by a preponderance of the evidence that he or she has been~~
 212 ~~rehabilitated."~~

213 SECTION 4.

214 Said article is further amended by revising Code Section 49-5-184, relating to hearing on
 215 expungement of name from registry, as follows:

216 "(a) ~~An~~ Except as provided in subsection (d) of this Code section, an individual whose
 217 name appears in the child abuse registry as having committed a substantiated case shall be
 218 entitled to a hearing for an administrative determination of whether or not expungement
 219 of such individual's name should be ordered. In order to exercise such right, ~~the~~ such
 220 individual shall after three years from the date such individual's name was included in the
 221 child abuse registry file a written request for a hearing with the division. ~~The provisions~~
 222 ~~of this subsection shall not apply to individuals who have waived a hearing after receipt of~~
 223 ~~notice.~~

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

235 (c) In determining whether to expunge an individual's name from the child abuse registry,
 236 the administrative law judge shall consider:

- 237 (1) The nature and circumstances of the child abuse;
 238 (2) The seriousness of the harm caused by the child abuse;
 239 (3) The criminal history of the individual who requested the hearing;
 240 (4) The risk to the child who was found to have been abused such individual poses;
 241 (5) The risk to the community such individual poses;
 242 (6) The impact on such individual's employment and licensure opportunities due to
 243 inclusion of such individual's name in the child abuse registry;

244 (7) Evidence of such individual's completion of training, rehabilitation, or efforts to learn
 245 effective strategies to care for children; and

246 (8) Any other factors deemed by such administrative law judge to be relevant to the
 247 determination.

248 (d) An individual's name shall not be expunged from the child abuse registry:

249 (1) While such individual is involved in an open dependency case for the act of child
 250 abuse for which such individual was included in the child abuse registry;

251 (2) If such individual was included in the child abuse registry for an act of child abuse
 252 that resulted in a child fatality; or

253 (3) If such individual's parental rights have been terminated either voluntarily or
 254 involuntarily as a result of the act of child abuse for which such individual was included
 255 in the child abuse registry.

256 ~~(c)~~(e) Within five days after the conclusion of such hearing, the administrative law judge
 257 shall issue an order regarding whether the name of the individual who requested the
 258 hearing should be removed from the child abuse registry and transmit such order to such
 259 individual and the division. Notwithstanding any other provision of law, the decision of
 260 the Office of State Administrative Hearings ~~pursuant to subsection (b) of this Code section~~
 261 shall constitute the final agency decision. ~~Any party~~ The alleged child abuser and the
 262 division shall have the right of judicial review of that such decision in accordance with
 263 Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that the
 264 petition for review shall be filed within 30 days after such decision and ~~may~~ shall only be
 265 filed with and the decision appealed to the superior court of the county where the hearing
 266 took place or, if the hearing was conducted by telephone, the Superior Court of Fulton
 267 County. The procedures for such appeal shall be the same as those for judicial review of
 268 contested cases under Code Section 50-13-19. The review and records thereof shall be
 269 closed to the public and not subject to public inspection.

270 (f) Upon receipt of an administrative decision ordering that an individual's name be
 271 removed from the child abuse registry, the division shall remove such individual's name,
 272 the classification and type of abuse, and the copy of the investigator's report from the child
 273 abuse registry. If an individual's request for expungement is denied, such individual may
 274 submit to the division a subsequent request for hearing, in accordance with subsection (a)
 275 of this Code section, no sooner than three years after such denial."

276 **SECTION 5.**

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