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DOMESTIC RELATIONS

Child Abuse: Require Certain Individuals to Report

CODE SECTION: O.C.G.A. § 19-7-5 (amended)
BILL NUMBER: HB 1355
ACT NUMBER: 1408
SUMMARY: The Act adds child-counseling and child service organization personnel to the list of individuals required to report child abuse. In addition, if anonymity is reasonably possible, photographs taken pursuant to the Act must not identify the subject.
EFFECTIVE DATE: July 1, 1988

History

In 1965, the Georgia Legislature amended the Code chapter relating to the relationship of parent to child.¹ The 1965 Act, entitled Reports of Cruel Treatment of Children, required certain persons to report the physical abuse of children.² The 1965 Act also described the nature and content of such reports, provided immunity from liability, and defined the purpose of the Act.³ The 1965 enactment was intended to protect children who were injured by those responsible for their health and welfare.⁴ Injuries, other than accidental, were to be reported to prevent future abuse, to protect the children, and to preserve the family unit.⁵

Persons required to report instances of cruel treatment of children under the age of twelve included physicians, licensed osteopaths, interns, residents, public health nurses, and welfare workers.⁶ Hospital staff were required to notify the individual in charge of the institution; that person was required to telephone immediately a child welfare agency which provided protective services.⁷ Public nurses and welfare workers were re-

1. 1965 Ga. Laws 588.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* These reports were to contain the names and addresses of the child and the parents or caretakers. If known, the reports were also to include the child's age, the extent and nature of the injury, and any other information which would be helpful in determining the cause of the injury and the identity of the perpetrator.

7. *Id.* In addition, the person charged with notifying the welfare agency was required to submit a written report at a later time.

quired to notify a county health officer concerning an apparent abuse; these reports were to be followed up as if made by a hospital staff member.⁸ If no child protective services existed in the area, reports were to be made to the appropriate police authority.⁹ All individuals making reports or participating in judicial proceedings were granted immunity from civil or criminal liability if they acted in good faith.¹⁰

In 1968, the statute was amended to require both dentists and podiatrists to report instances of abuse.¹¹ In 1973, the statute was amended again to include reporting by employees of the State Department of Education, local public school systems, and county and municipal recreation departments.¹² In addition, the age provision was expanded to protect children under eighteen years of age.¹³

A 1974 amendment added teachers, school administrators, child care personnel, and law enforcement personnel to the list of those required to report abuse.¹⁴ Also, the legislature expanded the definition of abuse to include injuries inflicted upon children who have been "neglected or exploited by a parent or caretaker, or [have] been sexually assaulted."¹⁵ Furthermore, in addition to the immediate oral reports previously required, individuals were required to follow up with a written report, if so requested.¹⁶

Psychologists and day care personnel were added in 1977 to the growing list of professionals and employees obligated to report child abuse.¹⁷ Additionally, an amendment authorized the reporting of abuse by "[a]ny other person having cause to believe that a child has had physical injury or injuries inflicted upon him other than by accidental means."¹⁸ Such individuals were permitted to report under the statute, but were not mandated to do so.¹⁹ The 1977 amendment also required that child abuse reports be made to child protective agencies "as designated by the Department of Human Resources."²⁰ The most significant feature of the 1977 amendment was the addition of criminal sanctions against those

8. *Id.* If no county health officer was available, reports of public nurses and welfare workers were to be made to a physician.

9. *Id.*

10. *Id.* "Participating in a judicial proceeding" has been interpreted to include initiating a proceeding as well as giving testimony in a proceeding which has been initiated by others. 1967 Op. Att'y Gen. 70.

11. 1968 Ga. Laws 1196.

12. 1973 Ga. Laws 309, 310.

13. *Id.*

14. 1974 Ga. Laws 438, 439.

15. *Id.* at 439. Prior law only required the reporting of "physical injury or injuries inflicted upon [children] other than by accidental means." 1973 Ga. Laws 309, 310.

16. 1974 Ga. Laws 438.

17. 1977 Ga. Laws 242.

18. *Id.* at 243.

19. *Id.*

20. *Id.* at 244.

who were required to report abuse but failed to do so. Thus, professionals and employees who are obligated to report abuse and "knowingly and willfully" fail to do so may be charged with a misdemeanor.²¹

Amendments to the statute in 1978 made only technical changes.²² In 1980, however, the statute was amended to permit photographs documenting evidence of a child's injuries; these photographs could be taken and used without the parent's or guardian's permission.²³ These photographs were not to reveal the identity of the child.²⁴

The 1981 amendment significantly changed the child abuse law.²⁵ Prior to this amendment, the statute protected neglected, exploited, and sexually assaulted children; with the passage of the 1981 amendment, "sexually exploited" children are also explicitly protected.²⁶ The 1981 amendment also provides that individuals obligated to report child abuse are required to have "reasonable cause" rather than "cause" to believe that a child is being abused.²⁷ The amendment allows reports to be made to the District Attorney, in addition to police authorities, in the absence of child welfare agencies.²⁸ Moreover, if the child welfare agency has "reasonable cause to believe such report is true," the agency is required to notify the District Attorney or the appropriate police authority.²⁹ Additionally, photographs taken to support allegations of child abuse are to be made available to child welfare agencies providing protective services and to police

21. *Id.* After a Marietta counselor was arrested and accused of failing to report a case of alleged child abuse involving a 12-year-old girl and her 11-year-old brother, social workers in Atlanta were overwhelmed by professionals calling to report suspected abuse of children. Durcanin, *Child Abuse Reports Up Since Counselor's Arrest*, Atlanta J. & Const., Jan. 23, 1988, at 1B, col. 1 [hereinafter Durcanin].

22. 1978 Ga. Laws 2059.

23. 1980 Ga. Laws 921.

24. *Id.*

25. 1981 Ga. Laws 1034.

26. *Id.* at 1035. Sexual exploitation occurs when a "child's parent or caretaker allows, permits, encourages, or requires such child to engage in prostitution . . . or allows, permits, encourages, or requires such child to engage in sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct." *Id.* The Attorney General has also stated that "deprived children" fall within the category of "neglected, exploited, and sexually assaulted" children who are protected under the Child Abuse Act. 1976 Op. Att'y Gen. 131. O.C.G.A. § 15-11-2(8) (Supp. 1988) defines a deprived child as one who:

(A) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals; or (B) has been placed for care or adoption in violation of law; or (C) has been abandoned by his parents or other legal custodian; or (D) is without a parent, guardian or custodian.

1981 Ga. Laws 1034.

27. 1981 Ga. Laws 1034. This change gives some discretion to professionals and employees in determining whether they are required to report a case of possible child abuse.

28. *Id.* at 1035.

29. *Id.*

authorities.³⁰

HB 1355

HB 1355 amends Code section 19-7-5 by including child-counseling and child service organization personnel among those required to report non-accidental injuries to children under the age of eighteen.³¹ As introduced, HB 1355 would have required "individuals who supervise or oversee or in any way are responsible for paid employees or volunteers who work directly with children in support, recreational, or service organizations" to report instances of abuse.³² This requirement that the supervisors of child caretakers report child abuse was deleted by the House Committee on Judiciary³³ and the change was approved in both houses.³⁴ Because caretakers are required to notify their supervisors and supervisors in turn are required to notify the proper authorities, this deletion protects supervisors from criminal prosecution when their employees fail to notify them of nonaccidental injuries to children.³⁵

HB 1355 amends the requirement that photographs of the child's injuries not identify the child.³⁶ It is often impossible to keep the child's identity secret because many injuries sustained by children are to the head and face. Therefore, the final version of HB 1355 requires that the child's identity not be revealed "if [confidentiality is] reasonably possible."³⁷

According to a sponsor of the bill, police officers and other law enforcement personnel were primarily the motivating forces to expand the list of those mandated to report cases of child abuse.³⁸ The bill was designed to require reporting by paid self-appointed child counselors.³⁹ The language of the original bill included volunteers, but that provision was deleted in

30. *Id.*

31. O.C.G.A. § 19-7-5(b) (Supp. 1988).

32. HB 1355, as introduced, 1988 Ga. Gen. Assem.

33. HB 1355 (HCS), 1988 Ga. Gen. Assem.

34. Final Composite Status Sheet, Mar. 7, 1988; *see also* O.C.G.A. § 19-7-5(b) (Supp. 1988).

35. *See* O.C.G.A. § 19-7-5(b) (Supp. 1988).

36. 1980 Ga. Laws 921 (formerly found at O.C.G.A. § 19-7-5(c) (1982)).

37. O.C.G.A. § 19-7-5(c) (Supp. 1988); telephone interview with Representative Steve Thompson, House District No. 20 (Apr. 19, 1988) [hereinafter Thompson Interview]; telephone interview with Mary Daigle, Case Work Supervisor Senior, Cobb County Department of Family and Children Services (Apr. 19, 1988) [hereinafter Daigle Interview].

38. Thompson Interview, *supra* note 37. Representative Thompson was a sponsor of HB 1355. Social workers work with police in cases which involve criminal charges for serious physical injury and sexual abuse. During their joint investigations, police became aware of a failure of child-counseling and child service organization personnel to report cases of child abuse and neglect. Telephone interview with Lieutenant Robert Pittman, Crimes Against Children Division, Cobb County Police (Apr. 19, 1988).

39. *Id.*

the House committee substitute because it was considered too broad.⁴⁰

The bill's language does not specifically address whether paid religious organization personnel working directly with children are required to report child abuse; however, it is foreseeable that such personnel could fall within the definition of those mandated to report abuse.⁴¹ A recent incident involving a priest may motivate the legislature to amend the statute to include religious personnel explicitly among those who are required to report abuse and who may be held criminally liable for failure to report such abuse.⁴²

The Act should increase the number of child abuse reports. In the metropolitan Atlanta area, social workers already have seen a dramatic increase in reports of child abuse and neglect from school counselors, mental health workers, and neighbors.⁴³ In addition, fifty-eight percent of the reports of abuse and neglect were substantiated over a six-month period in 1987. Increased reporting concerns social workers because they believe their departments are currently understaffed.⁴⁴

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40. *Id. Compare* HB 1355, as introduced, 1988 Ga. Gen. Assem. with O.C.G.A. § 19-7-5(b) (Supp. 1988).

41. Thompson Interview, *supra* note 37.

42. *Id. See* Green, *Priest Accused of Molestation; Church Denies a Cover-Up*, Atlanta Const., Apr. 5, 1988, at 1B, col. 5. According to the article, parents of the victims reported the alleged abuse to church officials and assumed that the officials would notify the proper authorities. Upon the church's failure to do so, the parents contacted the police. DeKalb District Attorney Robert Wilson questions whether O.C.G.A. § 19-7-5 applies to clergy and makes them criminally responsible for failure to report abuse once the abuse is reported to them. *Id.*

43. Daigle Interview, *supra* note 37. Apparently, the increase in reports is due to the recent arrest of a Marietta counselor accused of failing to report abuse. *Id.*; *see also* Durcanin, *supra* note 21.

44. Daigle Interview, *supra* note 37.