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DOMESTIC RELATIONS

Comprehensive Child Abuse Legislation

CODE SECTIONS: O.C.G.A. §§ 19-7-5 (amended), 49-5-180 to -187 (new), 19-1-1 to -6 (amended), 49-5-40 (amended), 49-5-46 (new), 15-11-41 (amended), 24-9-5(b) (amended), 35-3-15 to -41 (new), 45-16-1(b)(1) (amended), 45-16-20 to -48 (amended), 45-16-62(a) (amended, 45-16-66(a) (amended)

BILL NUMBERS: HB 1316, HB 1317, HB 1318, HB 1319, HB 1320, HB 1321, HB 1323

ACT NUMBERS: 1386, 1388, 1390, 1389, 1387, 1391, 1385

SUMMARY: This package of bills revised and added a number of code sections to Georgia's child protection legislation. The package includes requirements for reporting abuse and provides a civil penalty for failure to report. The package also includes provisions for a state-wide registry to improve information sharing between state agencies and tracing statistical information presently collected at the county level; a state medical examiner system; automatic autopsies following the deaths of children under age seven, or in situations in which circumstances warrant; more open access to child abuse records; and a requirement that child care services submit reunification plans when children are taken from their parents. The package also provides that children are competent to testify at deprivation and criminal child molestation trials.

EFFECTIVE DATE: July 1, 1990 (19-7-5, 19-1-1, 19-1-3, 19-1-5, 19-1-6, 49-5-180 to -187, 49-5-40 to -41, 49-5-46, 24-9-5(b); April 16, 1990 (19-1-2, 19-1-4, 35-3-15); (45-16-(b)(1), 45-16-20 to -48, 45-16-60(a), 45-16-66(a), 15-11-41)

History

In June 1989, a series of articles by Jane O. Hansen appeared in the *Atlanta Journal & Constitution*.¹ The seven part series, "Suffer

1. Hansen, *Suffer the Children*, *Atlanta J. & Const.* June 4-10, 1989, (Special Supplement) [hereinafter Special Supplement].

the Children,” focused on the failures of Georgia’s child protection system² and created an enormous amount of public interest.³

Ms. Hansen’s articles focused on fifty-one cases involving victims of child abuse or neglect who died while under the “protection” of Georgia’s child welfare system and made six principle findings of fact.⁴ First, suspicious deaths of children were not fully investigated by local officials. Causes of death were often labeled either natural or accidental without thorough investigation.⁵ Second, children regularly spent hours in courtrooms that were crowded and intimidating, waiting to testify in preliminary hearings regarding cases of alleged abuse or neglect.⁶ Third, temporary shelters were overcrowded and often used as dumping grounds for children the state was unable to place in permanent care.⁷ Fourth, the foster care system often created situations in which children were subjected to greater abuse than if they had been allowed to remain with their natural parents.⁸ Fifth, Georgia was one of ten states that failed to keep records of the number of children killed by their parents.⁹ Sixth, communication between individuals vital to the welfare of children—case workers, police officers, judges, prosecutors, and coroners—often failed because of inadequate record keeping and problems with access to existing information.¹⁰

Government entities were united in their swift response to the series of articles. The Governor’s office created a special task force to conduct a complete and thorough investigation.¹¹ The Governor’s Task Force on Unexplained Child Fatalities¹² focused their investigation on the files of the Department of Family and Children Services, regarding the fifty-two children who died in 1988.¹³ The House and

2. *Id.*

3. Interview with Rick Stancil, Executive Director, Comm. on Children & Youth; Executive Director, Juvenile Justice Coordination Council (Mar. 16, 1990) [hereinafter Stancil Interview].

4. Special Supplement, *supra* note 1.

5. *Id.* For example, suspicious infant deaths were often recorded as being caused by Sudden Infant Death Syndrome (SIDS) although no substantial investigation had been performed. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Stancil Interview, *supra* note 3.

12. Executive Order (Sept. 6, 1989) (available in Georgia State University College of Law Library). This was to be a quick, but thorough investigation, to be delivered to the Governor by Oct. 1989. Stancil Interview, *supra* note 3.

13. *See generally*, Report of the Governor’s Task Force on Unexplained Child Fatalities (Oct. 31, 1989) (available in Georgia State University College of Law Library) [hereinafter Task Force Report].

Senate also formed committees¹⁴ which focused on the same cases.¹⁵

The Task Force and the legislative committees, however, differed on the approach to be taken and the means for achieving success. The Senate focused on long-term, conceptual ideas and recommendations aimed at reducing child abuse in Georgia.¹⁶ The Task Force and the House believed, however, that immediate, system-oriented changes were needed. The system-oriented approach focused on both the legal and social services systems, and changes which could be effectuated through new laws and budget allocations.¹⁷

The Task Force made the following recommendations that formed the basis of the final "system-oriented" package of legislation.¹⁸

1. *Registry*

"There must be a method of tracking abuse reports to assist in protecting children and in making child abusers accountable."¹⁹

In many cases, information was collected and maintained on the county level; however, no centralized system existed to promote sharing this information between concerned state agencies.²⁰ The Task Force recommended the development of a centralized, statewide system "to keep track of abusers, children who have been abused, families against whom a report of abuse has been alleged, and the deaths of all children."²¹ The Task Force found that although the computer hardware existed to set up a statewide registry, neither the software nor the appropriate personnel were available to implement such a system.²²

2. *Uniform Death Investigation*

"Georgia must develop a system to provide uniform death investigations by trained forensic pathologists to all areas of Georgia."²³

14. Hansen, *Ga. House Panel to Propose 7 Bills on Child Welfare*, Atlanta J., Dec. 12, 1989, at D1, col. 5. The committees were originally established separately within the House and Senate, but began meeting jointly in September 1989, through the cooperative efforts of House Speaker Tom Murphy and Lt. Governor Zell Miller. *Id.*

15. Stancil Interview, *supra* note 3.

16. *Id.*

17. *Id.*

18. *Id.* Representative Mary Margaret Oliver, Co-chairman of the House Special Sub-Committee on Child Protection, drafted most of the legislation. Hansen, *House OKs Revamp of Child Welfare System*, Atlanta Const., Feb. 14, 1990, at A7, col. 1. Ms. Oliver and Representative Calvin Smyre, the Governor's floor leaders, introduced the legislation. Stancil Interview, *supra* note 3.

19. Task Force Report, *supra* note 13, at 33.

20. *Id.* at 37.

21. *Id.* at 33.

22. *Id.* at 36.

23. *Id.* at 46.

The Task Force determined that it was imperative to establish a uniform system of death investigation so that child maltreatment could be detected after a child's death.²⁴ Before 1990, the Georgia Bureau of Investigation (GBI) performed the duties of state coroner at the request of local officials.²⁵ All autopsies were completed through the counties and the GBI. There was no requirement, however, that an autopsy automatically be performed when a child's death was suspicious.²⁶ The Task Force was concerned that unusual circumstances were not being investigated,²⁷ and there was strong suspicion that the designation of Sudden Infant Death Syndrome (SIDS) had been stretched to include infant fatalities that may have actually resulted from accident or murder.²⁸

3. Confidentiality

"Georgia's law on the confidentiality of child abuse reports must be relaxed to allow greater access to this information on the part of those responsible for protecting children or investigating and prosecuting child abusers."²⁹

The Task Force recommended that the Department of Family and Children Services (DFACS) be allowed to share information in their reports with a wide variety of agencies and concerned individuals, including coroners, medical examiners, parents, foreign child protection agencies, and child fatality review teams.³⁰ It was suggested that, at a minimum, all government agencies charged with child protection, investigation, or prosecution duties be given statutory confidentiality exemptions.³¹

Prior to passage of the child abuse legislation, there were two statutes aimed specifically at maintaining the confidentiality of records in child abuse cases. Code section 49-5-40 required that records regarding reports of child abuse and neglect be kept confidential.³² The statute protected the family's privacy and the informer's identity.³³ This protection was viewed as mandatory to promote "free and conscientious" reporting of incidents of neglect or abuse.³⁴ Code section 49-5-41 strictly limited those

24. *Id.*

25. Stancil Interview, *supra* note 3.

26. *Id.*

27. *Id.* Georgia's present death act (Georgia Post-Mortem Act, O.C.G.A. § 45-16-27) was found to be adequate and therefore was not revised.

28. Task Force Report, *supra* note 13, at 50.

29. *Id.* at 28.

30. *Id.*

31. *Id.*

32. 1975 Ga. Laws 1135 § 1 (formerly found at O.C.G.A. § 49-5-40 (1989)).

33. Task Force Report, *supra* note 13, at 29.

34. *Id.*

agencies which were allowed access to these records.³⁵ In addition to protecting the family and the informer, both statutes were designed to allow child protection agencies access to vital information.³⁶

The unfortunate result, however, was that these statutes created a "shroud of secrecy" around Georgia's child protection system.³⁷ State agencies were perceived as being negative and closed. Private individual reporters of child abuse, seeking to determine whether appropriate measures had been taken, were blocked from gaining information.³⁸ Law enforcement and treatment professionals also experienced difficulty accessing files.³⁹

The press expressed concern that access to information was unduly limited. They contended that public interest demanded that these records be open.⁴⁰ Press members argued that public interest in child safety outweighed a dead child's privacy interest.⁴¹ The overall conclusion was that there was a legitimate and pressing need for more open access to these files.

Thus, what supporters of the child abuse legislation believed to be the strongest legal issue and greatest obstacle to passage came to light: how much access to confidential child abuse records should be allowed? Ironically, this question never became a major stumbling block. Instead, the definition of child abuse in HB 1316 and "a parent's right to use corporal punishment" became the center of the controversy which threatened the entire legislative package.

HB 1316

Two aspects of HB 1316 were troublesome.⁴² The drafters of HB 1316 intended to delineate specifically which parties should report child abuse and designated penalties for failure to do so.⁴³ Spouses and members of the clergy were included because these two groups often have special

35. 1975 Ga. Laws 1135 § 2 (formerly found at O.C.G.A. § 49-5-41 (1989)).

36. Task Force Report, *supra* note 13, at 29.

37. Hansen, *Legislators Urge Access to Child Abuse Records*, *Atlanta J. & Const.*, Jan. 25, 1990, at C3, col. 1.

38. Hansen, *supra* note 14, D6, col. 1.

39. Stancil Interview, *supra* note 3.

40. Hansen, *Bill Limiting Scrutiny of Child Cases Criticized*, *Atlanta J. & Const.*, Jan. 24, 1990, at C3, col. 2. "There's a legitimate public interest in knowing how effectively the state is combating child abuse . . ." *Id.* (quoting P.C. Canfield, attorney, Dow, Lohnes & Albertson, law firm representing the Atlanta Journal & Constitution).

Ms. Hansen had considerable difficulty accessing information regarding the 52 case studies, although the purpose of her research was clearly legitimate and she had assured the state that the anonymity of the children and families would be maintained. Special Supplement, *supra* note 1, at 3.

41. *Id.*

42. *Id.*

43. *Id.*

access to knowledge of abuse.⁴⁴ However, the language defining generally who is required to report abuse was problematic. The bill mandated reporting child abuse by any person with "reasonable cause to believe" that abuse had occurred, and included a \$500 fine for failure to report.⁴⁵ Senate legislators believed that the "reasonable cause to believe" phrase was overly broad and vague; thus, they changed the requirement to "actual knowledge."⁴⁶

A second area of controversy, and certainly the most surprising to the drafters of HB 1316, arose out of the definition of child abuse. There was overwhelming sentiment in the House and Senate that a parent's right to use corporal punishment should be protected.⁴⁷ The degree of hostility associated with this issue was unexpected and appeared to threaten passage of the entire child protection package.⁴⁸

The original draft of HB 1316 contained the definition of child abuse which had been in effect for fifteen years. The original definition was: "[a]ny physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means."⁴⁹

Legislators suddenly became concerned that this definition would deprive parents of their prerogative to punish their children through physical means, such as spanking and paddling.⁵⁰ Legislators were also worried that innocent people would be accused of child abuse.⁵¹

In response to these concerns, the following language was added to the existing definition of child abuse by a House committee substitute: "provided, however, that reasonable use of traditional forms of discipline, including but not limited to ordinary spanking and paddling, shall not be deemed to be child abuse."⁵² A House floor amendment then changed the word "shall" to "may" in the reporting requirement clause of the bill.⁵³ This change made reporting discretionary and significantly reduced the impact of the law.⁵⁴

44. Cook, *House Oks Plan on Reporting Child Abuse After Bill Weakened*, Atlanta J., Feb. 15, 1990, at C1, col. 1-2 [hereinafter Cook].

45. H.B. 1316, as introduced, 1990 Ga. Gen. Assem. This fine is a civil penalty. No criminal penalties were imposed as the drafters did not wish to subject spouses in abusive households to criminal liability. Hansen, *Georgia House Panel to Propose Seven Bills on Child Welfare*, Atlanta J., Dec. 12, 1989, at D1, col. 6.

46. Stancil Interview, *supra* note 3.

47. *Id.*

48. *Id.*

49. HB 1316, as introduced, 1990 Ga. Gen. Assem.

50. Cook, *supra* note 44 at C1, col. 1.

51. *Id.* at C6, col. 3. However, no proof was ever presented to support these suspicions. Stancil Interview, *supra* note 3.

52. HB 1316 (HCS), 1990 Ga. Gen. Assem. (introduced by Representative Tommy Smith).

53. HB 1316 (HCSFA), 1990 Ga. Gen. Assem.

54. Cook, *supra* note 44 at C6, col. 1.

The Governor's office and children's advocacy groups found these changes unacceptable.⁵⁵ These groups believed that the new language, in effect, said "it's o.k. to injure children."⁵⁶ In the Senate, the problem was multiplied as the new definition was substituted into three other bills to provide uniformity, thus endangering the passage of the entire package of bills.⁵⁷

Children's advocacy group's recommendations prompted the introduction of new language which limited the definition of abuse, so that "discipline administered for the purpose of correcting the child's behavior shall not be presumed to be child abuse when it is reasonable in manner and moderate in degree, with consideration for the age, size, and condition of the child."⁵⁸

The children's advocacy groups, the Senate authors and the Governor's office were satisfied with this change.⁵⁹ The "age appropriate" language provided sufficient protection for children, while still allowing for parental discipline.⁶⁰ Additionally, this language had been tested in the courts of other states, where accused child abusers were not permitted to use the language as an affirmative defense.⁶¹ A Senate floor amendment incorporated the new definition and also changed "may" back to "shall" under the reporting requirement.⁶²

House supporters of the original amendment were not satisfied with the Senate changes.⁶³ Thus, the "traditional forms" language was reintroduced in place of the "age appropriate" language and "shall" was again exchanged for "may."⁶⁴

A conference committee was formed.⁶⁵ As part of a suggested compromise, mandatory reporting was abandoned. The final version of the bill used the word "may,"⁶⁶ thus providing for voluntary reporting and immunity from the civil penalty for failure to report.⁶⁷ Senate representatives and child advocacy groups continued to oppose the "traditional forms" language,⁶⁸ as this language appeared to endorse what is often the "generational nature" of child abuse.⁶⁹

55. Stancil Interview, *supra* note 3.

56. Hansen, *House's New Definition of Abuse Endangers Child Protection Bills*, Atlanta Const., Mar. 8, 1990, at A1, col. 5. [hereinafter Hansen].

57. HB 1317 (SCS), HB 1318 (SCS), HB 1319 (SCS), 1990 Ga. Gen. Assem.

58. HB 1316 (SCS), 1990 Ga. Gen. Assem.

59. Stancil Interview, *supra* note 3.

60. *Id.*

61. Hansen, *supra* note 56, A18, col. 1. This had been a concern regarding the "traditional forms" language. Stancil Interview, *supra* note 3.

62. HB 1316 (SFA), 1990 Ga. Gen. Assem.

63. A floor motion to agree with the Senate changes was defeated.

64. HB 1316 (HFA), 1990 Ga. Gen. Assem.

65. Final Composite Status Sheet, Mar. 9, 1990.

66. O.C.G.A. § 19-7-5(d) (Supp. 1990).

67. Stancil Interview, *supra* note 3.

68. Hansen, *supra* note 56 at A18, col. 1. "According to experts, many child abuse

On the day before the last day of the session, special efforts were made to reach a compromise.⁷⁰ Alternative language was introduced: "physical forms of discipline may be used as long as there is no physical injury to the child."⁷¹ All interested parties were satisfied with the new definition.⁷² The new language in HB 1316 was then substituted into the three other bills, paving the way for passage of the entire package.

The end result is that HB 1316 redefines child abuse and lists those persons who must report.⁷³ Spouses and clergy are specifically required to report, notwithstanding the privileged or confidential nature of certain communications.⁷⁴ HB 1316 also provides penalties and fines for failure to report child abuse.⁷⁵

HB 1317

HB 1317 provides resources to create a statewide registry and access to information now collected by local agencies. Most importantly, a central computerized tracking system will be created to keep a record of all reports of child maltreatment.⁷⁶

HB 1319

In response to the need for more open access to child abuse records, the House and press demanded that files be opened completely.⁷⁷ The Governor, however, was unwilling to open the files because of concerns about family privacy rights and compliance with federal regulations.⁷⁸

homicides involve parents who start out disciplining their children and wind up killing them." *Id.*

69. *Id.* Child abuse is generational and is often handed down from parent to child. Stancil Interview, *supra* note 3.

70. Stancil Interview, *supra* note 3. Representatives Calvin Smyre, Mary Margaret Oliver, and Tommy Smith met to draft new language. *Id.*

71. HB 1316 (CCS), 1990 Ga. Gen. Assem. The new language was drafted by House Speaker, Tom Murphy. Stancil Interview, *supra* note 3.

72. Stancil Interview, *supra* note 3.

73. O.C.G.A. § 19-7-5(b)-(c) (Supp. 1990).

74. O.C.G.A. § 19-7-5(g) (Supp. 1990).

75. O.C.G.A. § 19-7-5(h) (Supp. 1990).

76. O.C.G.A. § 49-5-181 (Supp. 1990). Reports of abuse deemed "confirmed" and "unconfirmed" by the local DFACS caseworker will be recorded in the system. A report is labeled "unconfirmed" when there is suspected abuse but the perpetrator is unknown. Hansen, *supra* note 18, at A7, col. 2.

77. Stancil Interview, *supra* note 3.

78. *Id.* Certain minimum protections are required by federal law, violation of which would result in a substantial loss of federal funding to the state. The Division of Family and Children Services staff met with the Region IV Health and Human Services staff to discuss provisions of the proposed legislation which might conflict with federal law and regulations. Stancil Interview, *supra* note 3. Child Abuse and Neglect Prevention and

The press, the House and the Governor's office reached a compromise. New legislation was drafted in language no more restrictive than that used in federal legislation.⁷⁹ The precise language used had been tested in a Washington case which defined the scope of press access to such records.⁸⁰

HB 1319 allows more open access to records for state agencies, the press, and concerned individuals.⁸¹ All legitimate researchers are allowed access, but the burden of proof is on the individual seeking access to show the legitimacy of the research.⁸² Thus, reporters of child abuse and the identities of abused children are protected while access to records is allowed to appropriate individuals.

HB 1320

HB 1320 revises Code provisions relating to the removal of children from their homes.⁸³ The Division of Family and Children Services of the Department of Human Resources is required in each case to submit a plan for the reunification of the child with his or her family.⁸⁴ The objective is to provide permanency and stability in the long-term planning and placement of children.⁸⁵

HB 1321

HB 1321 provides for the competency of all children involved in deprivation or molestation cases, either as victims or as witnesses, to testify regardless of their age.⁸⁶

Prior to 1989, Code section 24-9-5 defined a child as competent only if the child understood the nature of an oath.⁸⁷ Thus, the issue of competency was left to the discretion of the judge.⁸⁸ By amendment in 1989, the legislature expanded the competency of children by allowing

Treatment funds are dispersed through an annual grant process. Georgia applies for these grants every year. The application requires the state to submit for review any legislation passed since the last application. In addition, the Governor is required to assure that confidentiality requirements are met. If the state does not meet the eligibility requirements, future grants will not be awarded. The amount of federal grants awarded to Georgia in fiscal year 1989 was \$654,315. *Id.*

79. *Id.* Stancil Interview, *supra* note 3.

80. *Seattle Times v. Benton County*, 9 Media L. Rep. (B.N.A.) 1541 (Wash. 1983).

81. O.C.G.A. § 49-5-41(a) (Supp. 1990).

82. O.C.G.A. § 49-5-41(b) (Supp. 1990).

83. O.C.G.A. § 15-11-41 (Supp. 1990).

84. O.C.G.A. § 15-11-41(c) (Supp. 1990).

85. Stancil Interview, *supra* note 3.

86. O.C.G.A. § 24-9-5(b) (Supp. 1990).

87. 1860 Ga. Laws 138.

88. *Middleton v. State*, 194 Ga.App. 815, 302 S.E.2d 203 (1990).

their testimony in cases involving child molestation.⁸⁹ A child victim or witness is allowed to testify regardless of age with credibility evaluated by the jury as opposed to the judge.⁹⁰

HB 1321 simply expands the situations in which the child may testify by including cases involving "deprivation" and "criminal cases involving" child molestation.⁹¹

HB 1323

HB 1323 revises Georgia's present medical examiners system. The newly established system has three requirements. First, only physicians trained in forensic pathology may serve as medical examiners.⁹² Second, regional labs must provide forensic pathologists to all areas of Georgia.⁹³ Third, designation of death by SIDS is allowed only after an autopsy.⁹⁴

HB 1323 creates a state medical examiners system which allows the appointment of one state medical examiner who will hire examiners for regional positions.⁹⁵ The Act also requires increased training of local coroners.⁹⁶ The most important aspect of the new Act is that automatic autopsies are required for deaths of children under age seven, or for deaths of other children which occur under unusual circumstances.⁹⁷

HB 1318

HB 1318 provides for death review teams.⁹⁸ Child Fatality Review Boards are interdisciplinary death review teams designed to implement thorough child death investigations.⁹⁹ Filing a child's death certificate pursuant to Code section 45-16-25 triggers the required investigation by the local death review team.¹⁰⁰

Conclusion

The unanticipated controversy regarding the definition of "child abuse" was the result of a number of factors.¹⁰¹ There was a great deal of

89. 1989 Ga. Laws 1639.

90. *Middleton*, 194 Ga. App. at 815, 302 S.E.2d at 203.

91. O.C.G.A. § 24-9-5(b) (Supp. 1990).

92. O.C.G.A. § 33-3-15(a) (Supp. 1990).

93. O.C.G.A. § 35-3-15(b) (Supp. 1990).

94. O.C.G.A. § 45-16-27.1(a) (Supp. 1990).

95. O.C.G.A. § 33-3-15(b)(2) (Supp. 1990).

96. O.C.G.A. § 33-3-15(b)(5) (Supp. 1990) (the regional examiners, their facilities and resources, will be available to local coroners for consultation and education).

97. O.C.G.A. § 45-16-24 (a) (Supp. 1990).

98. O.C.G.A. § 19-1-2(a)-(d) (Supp. 1990).

99. O.C.G.A. § 19-1-3(a) (Supp. 1990).

100. O.C.G.A. § 19-1-3(a)-(b) (Supp. 1990).

101. Stancil Interview, *supra* note 3.

anticipation, prior to the session, by groups supporting controversial abortion legislation. Such legislation was held for additional study, however, and these groups refocused their attention on the family rights issues involved in the child abuse legislation.¹⁰² There also appeared to be misplaced perceptions on the part of legislators that children could be taken from their parents simply on the basis of an accusation. Widespread paranoia existed over this "worst case" scenario.¹⁰³

A widely shared desire to implement this landmark legislation overcame fear and suspicion.¹⁰⁴ All parties recognized that the prevention of the unnecessary deaths of Georgia's children was being lost in a fight over a parent's right to spank their child.¹⁰⁵

Georgia now has provisions which authorize investigation of suspicious deaths, require autopsies in unexplained deaths of children under age seven, clarify and streamline reporting and record keeping, and relax confidentiality restrictions. The package should leave the children of Georgia better protected in the future.¹⁰⁶

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102. *Id.*

103. *Id.*

104. *Id.* In an impassioned speech on the floor of the House, the Governor's floor leader, Calvin Smyre, asked his peers not to lose sight of the real issue at stake. He implored his peers to see that the legislation be passed so that the children of Georgia could be safer. Hansen, *supra* note 61, at A18, col. 1.

105. *Id.*

106. *Id.*