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## SOCIAL SERVICES Programs and Protection for Children and Youth: Provide Foster Parents and Child-Placing Agencies Access to Records

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## SOCIAL SERVICES

### *Programs and Protection for Children and Youth: Provide Foster Parents and Child-Placing Agencies Access to Records*

CODE SECTION: O.C.G.A. § 49-5-41 (amended)  
BILL NUMBER: HB 1322  
ACT NUMBER: 1116  
SUMMARY: The Act provides identified foster parents and child-placing agencies access to certain records regarding children under consideration for foster care placement.  
EFFECTIVE DATE: July 1, 1994

#### *History*

Reported child abuse cases in Georgia top 50,000 annually.<sup>1</sup> The number of children in foster care nationwide has risen dramatically in recent years, from 300,000 in 1987 to at least 460,000 currently.<sup>2</sup> Similarly, the number of children who commit violent crimes is on the upswing.<sup>3</sup> In part, this disturbing trend may be attributed to a growing incidence of children identified by psychologists as “unattached,” that is, children who are prevented from forming loving bonds in the crucial early years.<sup>4</sup> The absence of this bonding, combined with other problems later in life, may produce a child without a conscience—a youngster unable to distinguish right from wrong.<sup>5</sup> Children set adrift in the foster care system are prime candidates for this type of problem.<sup>6</sup> For example, in Georgia, four-year-old Donovan Clark was slain by a twelve-year-old foster child.<sup>7</sup> Donovan’s mother, who was also the twelve-year-old’s foster parent, was allegedly not warned of the foster child’s history of arson, theft, and fighting.<sup>8</sup>

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1. Frances Schwartzkopff, *Latest Tragedy Points to DFACS Shortcomings*, ATLANTA CONST., July 18, 1993, at D6.

2. Report of American Public Welfare Association, *summarized in* Edward Walsh, *At-Risk Children Overwhelm Foster Care*, WASH. POST, Mar. 1, 1994, at A9.

3. “Unattached” Child Can Lack Conscience, ATLANTA CONST., Mar. 1, 1990, at E1.

4. *Id.*

5. *Id.*

6. *Id.* Barbara Madison, Director of the Attachment Center in Evergreen, Colo., notes that however capable foster parents may be, the system is not designed to encourage long-term relationships. *Id.*

7. Jingle Davis, *Appling Mom Sues DHR Over Foster Son Suit: Kid’s Violent Past Not Reported*, ATLANTA CONST., Mar. 2, 1993, at H2.

8. *Id.* Donovan’s mother sued the Georgia Department of Human Resources for negligent failure to warn her of the boy’s “criminal tendencies.” The outcome of this

Previously, a social worker with a child to place had the discretion to decide what information would be provided to the foster parents.<sup>9</sup> Unfortunately, this lack of communication resulted in too many inappropriate placements of children.<sup>10</sup> Once the child was in the home, the foster parents might discover the child had been using drugs or was potentially a sex crime perpetrator.<sup>11</sup> Uninformed and unprepared to deal with the situation, foster parents would request that the child be removed from the home.<sup>12</sup>

Currently, fifty percent of Georgia's foster children must subsequently leave the foster home after placement.<sup>13</sup> The average number of placements for each child in the foster care system is three.<sup>14</sup> While some subsequent placements of children in foster care are necessary due to inappropriate placements, other subsequent placements are the result of foster parents who become too elderly or sick to continue to care for their foster children.<sup>15</sup> Failed placements are extremely detrimental to the children who are moved because their negative self-image is reinforced.<sup>16</sup> They internalize the belief that "nobody likes me."<sup>17</sup> The high failure rate in Georgia is attributed, in part, to uninformed, and therefore unprepared, foster parents.<sup>18</sup>

### HB 1332

The Act, known as the "Truth in Placement Act," amends Code section 49-5-41 by adding a new subsection. This subsection gives identified foster parents and child-placing agencies access to the placement services records including reports of abuse, social history of the child and the child's family, medical history, including psychological

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case is still pending. Davis, *supra* note 7.

9. Telephone Interview with Tom Wade, Georgia Dep't of Human Resources (Sept. 1, 1994) [hereinafter Wade Interview I].

10. *Id.* Only about 1% of foster children are placed in foster homes by private foster care agencies outside of Division of Family and Children Services (DFACS). Wade Interview I, *supra* note 9.

11. Davis, *supra* note 7. For example, one foster boy who had been abused and had exhibited homosexual tendencies was placed with a family who had a boy around the same age. Interview with Rep. Sharon Trense, House District No. 44 (Mar. 22, 1994) [hereinafter Trense Interview I].

12. Trense Interview I, *supra* note 11.

13. Telephone Interview with Rep. Sharon Trense, House District No. 44 (Apr. 16, 1994) [hereinafter Trense Interview II].

14. *Id.*

15. Wade Interview I, *supra* note 9.

16. Trense Interview I, *supra* note 11.

17. Telephone Interview with Normer Adams, Georgia Association of Homes and Services for Children (Apr. 15, 1994) [hereinafter Adams Interview].

18. Trense Interview II, *supra* note 13.

or psychiatric evaluations, and educational records.<sup>19</sup> The "Truth in Placement Act"<sup>20</sup> replaces previous law under which prospective or current foster parents were provided access only to records concerning reports of abuse.<sup>21</sup> The Georgia Association of Homes and Services for Children initiated HB 1322 in reaction to the high numbers of failed placements within the Georgia foster care system.<sup>22</sup>

The purpose of the Act is to reduce the number of times a child is placed in a new foster home by making the foster child's first placement an appropriate one.<sup>23</sup> Also, the Act will improve communication between DFACS, foster care agencies, and parents.<sup>24</sup> By giving child-placing agencies and identified foster parents complete information about a child, the individuals responsible for placing the child can make a more informed and intelligent decision.<sup>25</sup> The Act also allows the foster parents access to information about the child so they are both aware of the particular needs of the child and able to tailor the child's care accordingly.<sup>26</sup>

The Act requires caseworkers to provide all relevant records in order to give foster parents a more complete picture.<sup>27</sup> The foster parents can then make an informed decision whether or not to accept a placement and will be better equipped to handle any problems which may arise.<sup>28</sup> Thus, the Act attempts to provide as much stability as possible.<sup>29</sup>

There are three potential problems with the "Truth in Placement Act." First, full disclosure may well cut down on the number of foster parent candidates for troubled children.<sup>30</sup> However, the advantages of

19. O.C.G.A. § 49-5-41(d) (1994). An "identified" foster parent is one approved by DFACS and on the waiting list for a placement. Telephone Interview with Rep. Sharon Trense, House District. No. 44 (Sept. 19, 1994).

20. Tom Wade of the Dep't of Human Resources feels that "Truth in Placement" is a misnomer, as it implies "untruth" in placement was the prior practice. He states DHR never objected to releasing information but was unable to do so under state and federal confidentiality requirements. Telephone Interview with Tom Wade, Georgia Department of Human Resources (Apr. 10, 1994) [hereinafter Wade Interview II].

21. See 1993 Ga. Laws 1712, § 2 (formerly found at O.C.G.A. § 49-5-41(a)(9) (Supp. 1993)).

22. Adams Interview, *supra* note 17.

23. Wade Interview II, *supra* note 20; Trense Interview I, *supra* note 11.

24. Trense Interview I, *supra* note 11.

25. *Id.*

26. *Id.*

27. Wade Interview II, *supra* note 20.

28. *Id.*

29. *Id.*

30. See Walsh, *supra* note 2. It is difficult to recruit foster parents for children who have deep emotional and other problems. *Id.* A 1991 survey by the National Foster Parents Association shows while the number of children in out-of-home care increased by 47% between 1985 and 1990, the number of foster families decreased by

informed consent are thought to outweigh the risk of reducing the available pool of candidates.<sup>31</sup> Another concern is the inherent privacy issue.<sup>32</sup> To address this concern, the bill provides that the child's identity remain confidential until after the placement is completed.<sup>33</sup> Finally, there is no guarantee the Act will effectively warn foster parents of all the potential problems with their foster children.<sup>34</sup>

The Act adds foster parents, child-caring agencies, and child-placing agencies to the list of people entitled to reasonable access to nonidentifying information about the child's background such as the child's age, sex, or emotional problems prior to placement.<sup>35</sup> Once the child is placed in a foster home, the foster parent is provided with the child's name, which is considered identifying information.<sup>36</sup> In addition, the Act adds a provision requiring that the record is not limited to reports of child abuse, but includes the child's social history, medical history, and educational records.<sup>37</sup> The Act further provides for penalties to be imposed by Code section 49-5-44 for unauthorized access to or use of such records by any child-caring agency, child-placing agency, or identified foster parent granted access to these records.<sup>38</sup> The Act excludes "all documents obtained from outside sources which cannot be redisclosed under state or federal law."<sup>39</sup> Finally, the bill deleted a section of the original law which listed any foster parent as a person having access to a foster child's records<sup>40</sup> because this Act renders the former provision unnecessary.<sup>41</sup>

The Committee on Judiciary offered a substitute to the original bill that reworded the provision regarding the child's record and did not

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27%. *Id.*

31. Trense Interview II, *supra* note 13.

32. *Id.*

33. O.C.G.A. § 49-5-41 (1994). Information provided does not include child's identity. *Id.*

34. Wade Interview I, *supra* note 9.

35. O.C.G.A. § 49-5-41(d) (1994); Trense Interview I, *supra* note 12.

36. Trense Interview I, *supra* note 11.

37. O.C.G.A. § 49-5-41(d) (1994).

38. *Id.* O.C.G.A. § 49-5-44 provides that a person guilty of unauthorized access to or use of such records is guilty of a misdemeanor. *Id.* § 49-5-44(a)-(b) (1994).

39. *Id.* § 49-5-41(d) (1994). The laws this section may be referring to are O.C.G.A. §§ 37-3-166 (clinical records of the mentally ill), 37-4-125 (clinical records of the mentally retarded), 37-7-166 (clinical records of any alcoholic, drug dependent individual), and 42 C.F.R. § 2 (confidentiality of alcohol and drug abuse patient records). This list is not exhaustive. Telephone Interview with Sandra Laszlo, Legal Services Officer, Division of Mental Health, Mental Retardation, and Substance Abuse (Sept. 20, 1994).

40. Compare 1993 Ga. Laws 1712, § 2 with O.C.G.A. § 49-5-41(a) (1994).

41. Trense Interview I, *supra* note 11.

change its original meaning.<sup>42</sup> The bill substitute proposed by the Committee on Judiciary passed the House and the Senate.<sup>43</sup>

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42. *Id.*; see HB 1322 (HCS), 1994 Ga. Gen. Assem. The substitute bill changed the provision to read “[s]uch record shall include” instead of “such record shall not be limited to . . . but shall include.” *Id.*

43. Final Composite Status Sheet, Mar. 16, 1994.