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SOCIAL SERVICES Programs and Protection for Children and Youth: Provide Opportunity for Administrative Hearing Prior to Listing Suspected Child Abusers on Registry

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SOCIAL SERVICES

Programs and Protection for Children and Youth: Provide Opportunity for Administrative Hearing Prior to Listing Suspected Child Abusers on Registry

CODE SECTIONS:	O.C.G.A. §§ 49-5-180 to -187 (amended)[1]
BILL NUMBER:	HB 155
ACT NUMBER:	427
GEORGIA LAWS:	1995 Ga. Laws 937
SUMMARY:	The Act amends the statutory requirements for notice to individuals suspected of child abuse by providing, upon request, an administrative hearing prior to placing their names on the state child abuse registry maintained by the Georgia Department of Human Resources' Division of Family and Children Services. The Act renames the child abuse registry as the "Child Protective Services Information System." Additionally, the Act amends the definition of "child abuse" and adds a comprehensive definition of "sexual abuse." The Act permits district attorneys to use registry information in criminal proceedings, so long as the information is otherwise admissible. Lastly, the Act gives named individuals access to information about their registry classification, date of inclusion, and other relevant details.
EFFECTIVE DATE:	July 1, 1995

History

Georgia's child abuse registry was created in 1990[2] to

1. HB 155 affects two separate titles of the Code. This *Peach Sheet*™ addresses the changes to chapter 5 of title 49. A separate *Peach Sheet* within this issue discusses the changes to chapter 3 of title 24, dealing with the child hearsay statute. *See Legislative Review*, 12 GA. ST. U. L. REV. 197 (1995).

2. 1990 Ga. Laws 1772 (formerly found at O.C.G.A. § 49-5-181 (1994));

"maintain data regarding child abuse and facilitate immediate identification of child abuse reports."[3] The list was designed as an internal investigative tool by the Georgia Department of Human Resources' Division of Family and Children Services (DFACS).[4]

Prior to the Act, DFACS would begin an investigation upon a report of child abuse.[5] If there was "substantial credible evidence" of abuse, the report was classified as "confirmed."[6] If some credible evidence existed, but not enough to be considered "substantial," the report was classified as "unconfirmed."[7] If there was "no credible evidence" that abuse had taken place, the report was classified as "unfounded."[8]

Upon a finding that reports were confirmed or unconfirmed, the alleged abuser's name was placed on the state child abuse registry.[9] In addition, names were often placed on the registry before the DFACS worker completed the investigation.[10]

In some cases, named individuals were not formally notified that they had been reported to the agency and that their names had been added to the registry.[11] When individuals were notified

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see also Legislative Review, 7 GA. ST. U. L. REV. 268 (1990).

3. 1990 Ga. Laws 1772, § 1, at 1774-75 (formerly found at O.C.G.A. § 49-5-182 (1994)).

4. Telephone Interview with Rep. Cathy Cox, House District No. 160 (Apr. 7, 1995) [hereinafter Cox Interview].

5. 1990 Ga. Laws 1772 (formerly found at O.C.G.A. § 49-5-183(a) (1994)).

6. *Id.* (formerly found at O.C.G.A. § 49-5-180(6) (1994)). This statutory scheme was rejected by the United States Court of Appeals in *Valmonte v. Bane,* 18 F.3d 992 (2d Cir. 1993). The court rejected New York's "some credible evidence" standard of proof for registering suspected child abusers. *Valmonte,* 18 F.3d at 1004. The court reasoned that the standard did not require the fact finder (case worker) to weigh conflicting evidence, but required only the "bare minimum of material credible evidence to support the allegations against the [alleged abuser]." *Id.*

7. 1990 Ga. Laws 1772, § 1, at 1774 (formerly found at O.C.G.A. § 49-5-180(10) (1994)).

8. *Id.* (formerly found at O.C.G.A. § 49-5-180(12) (1994)).

9. *Id.* (formerly found at O.C.G.A. § 49-5-184(a) (1994)).

10. Cox Interview, *supra* note 4; *see also* Rep. Cox, Record of Proceeding in the House Judiciary Committee (Jan. 18, 1995) (remarks by Rep. Cox) [hereinafter House Judiciary Committee] (available in Georgia State University College of Law Library). Following completion of the investigations, 17,000 listings were determined to have been based on unfounded claims of child abuse. *Id.*

11. House Judiciary Committee, *supra* note 10.

by letter, they were often "horrified or panicked" upon finding out that they were being accused of child abuse.[12]

In order to challenge the placement of their names on the registry, alleged abusers were required to request a hearing before a juvenile court judge.[13] This process often took several weeks and generally required an attorney, which many people could not afford.[14]

Several legislators, who were also practicing attorneys, recognized these inherent problems in the system.[15] Representative Cathy Cox responded by introducing legislation to address these problems during the 1994 legislative session; however, this legislation did not pass.[16]

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12. Cox Interview, *supra* note 4. There is good reason to panic, as the stigma of being a named child abuser often follows one for years. Cox Interview, *supra* note 4. In addition, thirty to fifty percent of the 50,000 accusations of child abuse over the past two to three years were found to have no credible evidence to support the accusations and were thrown out. Cox Interview, *supra* note 4.

13. 1990 Ga. Laws 1772 (formerly found at O.C.G.A. § 49-5-184(c) (1994)).

14. Cox Interview, *supra* note 4.

15. Cox Interview, *supra* note 4. These legislators included Reps. Cox, Jim Martin, House District No. 47, and Speaker of the House Thomas B. Murphy, House District No. 18. Cox Interview, *supra* note 4. In addition to the problems listed above, legislators were concerned about the practice of placing names of child care facilities' owners or directors on the registry, which occurred when abuse was determined to have taken place in their facilities, but there was no evidence against one specific child care worker. Cox Interview, *supra* note 4. Further, legislators and lobbyists from various constituencies expressed concerns about the lack of due process afforded alleged abusers when DFACS placed names on the registry prior to a complete investigation or hearing. Cox Interview, *supra* note 4; *see also* House Judiciary Committee, *supra* note 10. Finally, Rep. Cox noted that the United States Court of Appeals had struck down New York's "some credible evidence" standard of proof. Cox Interview, *supra* note 4; *see supra* note 6. New York's registry standards were similar to Georgia's pre-1995 standards. Cox Interview, *supra* note 4.

16. Cox Interview, *supra* note 4. In attempting to improve the registry system, Rep. Cox had the support of Speaker of the House Thomas Murphy, who previously had represented a constituent attempting to get his name removed from the list. Cox Interview, *supra* note 4. During the process, Speaker Murphy made remarks to an assistant attorney general that were widely reported as threats to the funding of the registry. Cox Interview, *supra* note 4. These remarks eventually led to the filing of ethics charges against the Speaker; the House Ethics Committee failed to find an ethical violation. *Legislature: 1994 Session In Brief: Murphy Denounces Charges,*

Following the 1994 session, an informal task force of legislators, state administrators, and lobbyists met to discuss the current registry system and propose solutions.[17] During these meetings, the provisions of HB 155 were discussed[18] and a compromise bill was drafted.[19] HB 155 was introduced in the House by Representative Cox[20] and was assigned to the House Judiciary Committee.[21]

HB 155

The Act renames the central child abuse registry[22] as the "Child Protective Services Information System."[23] It expands the definition of "child abuse"[24] to include "sexual abuse" as currently defined by the Code.[25] However, the Act expressly

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ATLANTA CONST., Jan. 13, 1994, at E4; *see also Editorial: Weakening Child Protection,* ATLANTA CONST., Jan. 24, 1994, at A10. The bill was widely considered to be the Speaker's bill and became "caught up in a lot of political brouhaha between the House and Senate." Cox Interview, *supra* note 4; *see also Editorial: With Murphy, Every Bill is Personal,* ATLANTA CONST., Mar. 21, 1994, at A16.

17. Cox Interview, *supra* note 4. These individuals included Reps. Cox and Martin, Sen. Mary Margaret Oliver (Senate District No. 42), Thomas Wade of the Department of Human Resources, and Sarah Brownlee, Department of Human Resources' Division of Family and Children Services (DFACS). Cox Interview, *supra* note 4; *see also* Telephone Interview with Thomas Wade, Assistant Commissioner for Policy and Government Services, Department of Human Resources (Apr. 7, 1995) [hereinafter Wade Interview]; House Judiciary Committee, *supra* note 10. This task force was not legislatively created and did not generate a formal report. Cox Interview, *supra* note 4.

18. House Judiciary Committee, *supra* note 10; *see also* Cox Interview, *supra* note 4.

19. Cox Interview, *supra* note 4; Wade Interview, *supra* note 17.

20. Cox Interview, *supra* note 4; HB 155, as introduced, 1995 Ga. Gen. Assem.

21. Final Composite Status Sheet, Mar. 17, 1995.

22. 1990 Ga. Laws 1772 (formerly found at O.C.G.A. § 49-5-181 (1994)).

23. O.C.G.A. § 49-5-180(2) (Supp. 1995); *see also id.* § 49-5-181. This provision was proposed in the House Judiciary Committee to make the registry seem less threatening to named individuals. Cox Interview, *supra* note 4; *see also* HB 155 (HCS), 1995 Ga. Gen. Assem. The name change was also considered a way to reduce the number of hearings requested under the new provisions. Cox Interview, *supra* note 4.

24. O.C.G.A. § 49-5-180(5) (Supp. 1995).

25. *Compare id.* § 49-5-180(8.1) *with* 1993 Ga. Laws 1695, § 1, at 1696-97

states that the amendments do not affect existing statutes concerning the age or capacity to consent.[26] The Act also specifically excludes "good faith" religious activity as being classified as abuse.[27]

The Act requires that, upon a report of the abuse or deprivation of a child, an employee of the county DFACS office initiate and complete an investigation into the facts surrounding the abuse.[28] The intention of this provision is to make clear to DFACS case workers that they must complete an investigation before listing an alleged abuser.[29] Upon completion of the investigation, the investigator classifies the report as confirmed, unconfirmed, or unfounded.[30] This provision requires a separate report for each alleged abuser.[31] This requirement provides some protection when allegations are made against several people because the actual abuser cannot be readily identified, such as in a day care setting.[32] Unless some credible evidence is found against a specific individual, a name cannot be placed on the registry.[33] However, even if the actual abuser cannot be identified, the child's name is placed on the registry to monitor for possible future abuse.[34]

The Act amends the definition of "confirmed" to require a finding of "equal or greater credible evidence that child abuse occurred" than that it did not occur.[35] The intent of this amendment is to require the investigator or case worker to weigh all of the available credible evidence before making a

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(codified at O.C.G.A. § 19-7-5(b)(3.1) (Supp. 1993)).

26. O.C.G.A. § 49-5-180(8.1) (Supp. 1995); *see also Legislative Review*, 10 GA. ST. U. L. REV. 131, 134-35 n.32 (1993).

27. O.C.G.A. § 49-5-180(5)(E) (Supp. 1995); *see also* 1993 Ga. Laws 1695, § 1, at 1696 (codified at O.C.G.A. § 19-7-5(b)(3)(E) (Supp. 1993)); *Legislative Review, supra* note 26, at 134 n.35. This provision was added in the House Judiciary Committee to make the Act consistent with other provisions of the Code. Cox Interview, *supra* note 4; HB 155 (HCS), 1995 Ga. Gen. Assem.

28. *See* O.C.G.A. § 49-5-183 (Supp. 1995).

29. Cox Interview, *supra* note 4.

30. O.C.G.A. § 49-5-183(a) (Supp. 1995).

31. *Id.*

32. Cox Interview, *supra* note 4.

33. *See* O.C.G.A. § 49-5-181 (Supp. 1995).

34. Cox Interview, *supra* note 4; *see also* 1990 Ga. Laws 1772 (codified at O.C.G.A. § 49-5-183(c)(1) (1994)).

35. O.C.G.A. § 49-5-180(6) (Supp. 1995).

determination on the likelihood of abuse.[36] This change was made because DFACS requested statutory standards for its employees to follow.[37] The Georgia Department of Human Resources and DFACS have pledged to increase case worker training regarding application of the new standards.[38] The Act also amends the definition of "unconfirmed" to address cases in which an investigator finds "some credible evidence" of abuse, but not enough to qualify as "confirmed."[39] In the absence of any credible evidence of abuse, the report will be classified as "unfounded," and the alleged abuser's name will not be included on the registry.[40]

Upon classifying the report as confirmed or unconfirmed, DFACS must send notice to the alleged abuser of its intent to place that person's name on the child abuse registry.[41] The alleged abuser has ten days after receiving notice to file a written request with the DFACS office for an administrative hearing.[42]

Within ten days of receiving the request, the DFACS office must forward the request to the hearing office in the same county where the alleged abuse took place.[43] Notice of the hearing date will be sent to the alleged abuser.[44] The Act further requires that the hearing, which is closed to the public, be held and a decision rendered within fifteen days.[45] This expedited procedure is intended to discourage the use of a hearing as a "delay tactic" by an alleged abuser.[46]

If the alleged abuser chooses to appeal the administrative decision, a motion for appeal to the juvenile court must be filed within ten days of the decision.[47] This filing stays the listing of

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36. House Judiciary Committee, *supra* note 10.
37. Cox Interview, *supra* note 4.
38. Cox Interview, *supra* note 4.
39. O.C.G.A. § 49-5-180(10) (Supp. 1995).
40. *Id.* § 49-5-181.
41. *Id.* § 49-5-183.1(b).
42. *Id.* The alleged abuser is not required to file a formal petition with the court or hire an attorney. Cox Interview, *supra* note 4.
43. O.C.G.A. § 49-5-183.1(c) (Supp. 1995).
44. *Id.*
45. *Id.* § 49-5-183.1(d).
46. Cox Interview, *supra* note 4. The hearing process should not jeopardize the safety of children because DFACS has the right to remove a child from a situation if there is a threat of harm. Cox Interview, *supra* note 4.
47. O.C.G.A. § 49-5-183.1(e) (Supp. 1995).

the alleged abuser's name on the registry for another thirty days, providing time for judicial review.[48] The decision of the juvenile court is final.[49]

Alleged abusers who fail or otherwise choose not to challenge the listing of their names on the registry may later request a hearing to have their names removed.[50] The Act provides that the alleged abuser may request a hearing through the DFACS office in any county in which the investigation was conducted.[51] Within ten days, the DFACS office must send the request for a hearing to the county's hearing office.[52] The Act requires that the hearing be conducted within sixty days of the request.[53] In the interim, the alleged abuser's name remains on the registry.[54] The alleged abuser has one right of appeal to the juvenile court, which is final.[55]

Persons who are unsure whether they are named on the registry may make a written inquiry to determine if they are included.[56] When a person presents appropriate identification to a DFACS office, the office will confirm whether the person is named on the registry and, if the name is present, the classification of the report, the date of inclusion on the registry, and the county in which the investigation was conducted.[57]

The Act allows a district attorney to use the registry information in any court proceeding "if such information is

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48. *Id.*

49. *Id.* The appeal is not a de novo hearing; the juvenile court judge reviews only the record of the administrative hearing to determine whether the appropriate level of evidence was present to support the registry listing. Cox Interview, *supra* note 4.

50. O.C.G.A. § 49-5-184(c) (Supp. 1995).

51. *Id.*

52. *Id.* § 49-5-184(d).

53. *Id.*

54. *See id.*; Cox Interview, *supra* note 4. Because the name remains on the list while it is being challenged, more time is given for completion of the hearing. Cox Interview, *supra* note 4.

55. O.C.G.A. § 49-5-184(e) (Supp. 1995).

56. *Id.* § 49-5-185(c). The Georgia Child Care Association requested this change on behalf of day care workers who suspected that their names had been listed but, because of the previous statutory limitations on access to registry information, were unable to verify their inclusion. Cox Interview, *supra* note 4.

57. O.C.G.A. § 49-5-185(c) (Supp. 1995).

otherwise admissible."[58] The Act also precludes a district attorney from otherwise making registry information public.[59]

The Act provides that, during "any hearing held pursuant to this Code section,"[60] a child's testimony shall be taken in a manner which is "analogous to [procedures] contained in Code Section 17-8-55."[61] This statute allows children ages ten and under to testify in criminal proceedings through the use of closed circuit television.[62] This provision of the Act addresses concerns that alleged abusers might attempt to compel children to testify in a hearing in order to intimidate them.[63] Additionally, the provision serves as a reminder that closed circuit television is an appropriate manner of gathering evidence in child abuse cases.[64]

The Act was signed into law by Governor Zell Miller on April 19, 1995.[65]

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58. *Id.* § 49-5-186.
59. *Id.* § 49-5-186(b).
60. *Id.* § 49-5-183.1(g).
61. *Id.; see also* 1991 Ga. Laws 1377, § 1, at 1377-79 (codified at O.C.G.A. § 17-8-55 (Supp. 1994)).
62. 1991 Ga. Laws 1377 (codified at O.C.G.A. § 17-8-55 (Supp. 1994)).
63. Cox Interview, *supra* note 4. A similar concern was raised on the House floor by Rep. McCracken Poston, Jr., House District No. 3, who sponsored an amendment that would have delayed registry-related hearings until after criminal convictions of abusers. Cox Interview, *supra* note 4. The amendment proposed by Rep. Poston was not included in the final version of the Act. Cox Interview, *supra* note 4.
64. Cox Interview, *supra* note 4.
65. Final Composite Status Sheet, Mar. 17, 1995.