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SOCIAL SERVICES

Programs and Protection for Children and Youth: Provide Employee Records Checks for Daycare Centers

CODE SECTIONS:	O.C.G.A. §§ 35-3-39.1 (new), 49-2-14, 49-5-60 (amended), -62 to -69 (new)
BILL NUMBERS:	HB 30, SB 165
ACT NUMBERS:	320, 331
GEORGIA LAWS:	1999 Ga. Laws 539, 574
SUMMARY:	The Acts require each daycare facility to appoint a director who has completed satisfactory federal and state fingerprint checks prior to being hired or appointed as director. Employees other than the director are required to have satisfactory preliminary state background checks, but they do not have to submit to state and federal fingerprint checks unless the preliminary background check is unsatisfactory. The Acts require persons without daycare responsibilities living in family daycare centers to undergo the same preliminary checks as employees of daycare facilities. The Acts provide that an applicant pay the fees for the records check. The Act that originated in the Senate also provides for cooperation between federal and state governments in the sharing of information on criminal history for this noncriminal use.
EFFECTIVE DATE:	July 1, 1999

History

Currently, a daycare worker can work six to eight weeks before a facility receives a report from the Department of Human Resources (DHR) regarding whether that person has a criminal history.¹ Prior to

1. See Interview with Rep. Terry E. Barnard, House District No. 154 (Feb. 17, 1999)

July 1, 1999, the law required that day care facilities obtain a completed preliminary records check for a director and completed and filed applications for employees.² Therefore, the previous law required that centers hire applicants without any official information because, in most cases, applicants cannot wait two months for the DHR to send their results.³ Current law for other facilities providing care for individuals who are not *sui juris*, such as nursing homes, foster homes, state educators, and personal care homes, already provide the facility with the resources to gain criminal history reports on potential employees before they are hired.⁴

After hearing of an incident involving an employee of a daycare center who beat a child with a wooden spoon shortly after the center hired her, Representative Terry E. Barnard introduced HB 30 to provide for background checks of daycare facility employees.⁵ At the encouragement of Representative Barnard, Senators Greg Hecht of the 34th District, Nathan Dean of the 31st District, David Scott of the 36th District, and others introduced SB 165 in the Senate.⁶

Introduction of HB 30

As originally introduced in the House, the bill required all employees to submit to state and national fingerprint checks and to

[hereinafter Barnard Interview]. Representative Barnard indicated that people with extensive criminal histories were allowed to work in Georgia daycare centers too long before their results came in from DHR. *See id.* Presently, a Georgia Crime Information Center (GCIC) check is not required for an employee to begin working at a daycare center. *See id.*

2. *See* 1985 Ga. Laws 963, § 1, at 967 (formerly found at O.C.G.A. § 49-5-62 (1998)). Compare O.C.G.A. § 31-7-351 (1998) (stating that nursing homes are required to do background checks but can still hire people with criminal records), *with id.* § 31-8-252 (stating that personal care homes have similar requirements to the Acts).

3. *See* Interview with Rachel Cronkhite, President, Georgia Child Care Association, Vice President Mike Martin, and former President Rick Griffin (Feb. 17, 1999) [hereinafter Ga. Child Care Ass'n Interview].

4. *See* 1985 Ga. Laws 952, § 2, at 958 (codified at O.C.G.A. § 31-7-256 (1998)) (requiring satisfactory fingerprint check of director and satisfactory preliminary check for each employee of a personal care home); O.C.G.A. § 31-7-351 (1998) (requiring a criminal record check from GCIC before hiring an employee in a nursing home); *id.* § 49-5-69.1 (requiring foster parents to obtain satisfactory preliminary records check determinations and pending state fingerprint checks); *id.* § 20-2-211 (requiring fingerprint and criminal background checks of state school system personnel); *see also* *Review of Selected 1994 Georgia Legislation*, 11 GA. ST. U. L. REV. 184, 184-85 (1994).

5. *See* Ga. Child Care Ass'n Interview, *supra* note 3.

6. *See* SB 165, as introduced, 1999 Ga. Gen. Assem.

receive a satisfactory report on these checks before beginning work.⁷ Childcare providers claim that this would pose an incredible hardship on daycare centers because they must maintain a specific child-to-care-giver ratio established by law to remain open for business.⁸ The Acts reduce the time allowed for the Georgia Crime Information Center (GCIC) to return results from the state records check from seventy-five days to ten days.⁹

Provisions for Temporary Emergency Situations

The Acts provide a practical way for childcare centers to protect themselves and the children in their care. Courts often hold daycare centers liable for the misdeeds of their employees, yet these daycare centers have no publicly-provided means to access criminal histories and fingerprints of potential employees.¹⁰ The Georgia Child Care Association supported HB 30 after the House Human Relations and Aging Committee made substitutions to the bill.¹¹ The Committee substitute added a definition of “emergency temporary employee” that applies to any employee other than the director whom a center hires to care for children on an “expedited basis to avoid noncompliance with staffing standards.”¹² A new section provides an exception to records check requirements when centers meet two conditions.¹³ First, the director must provide an affidavit stating that the emergency temporary employee has applied for records checks.¹⁴ Second, the expedited hiring must be necessary in order for the facility to remain in compliance with laws requiring a certain number of employees to be present while the center is open.¹⁵ The employee can work for up

7. See HB 30 as introduced, 1999 Ga. Gen. Assem.

8. See Ga. Child Care Ass’n Interview, *supra* note 3.

9. See O.C.G.A. § 49-5-64 (Supp. 1999).

10. See Ga. Child Care Ass’n Interview, *supra* note 3. Ms. Cronkhite stated that currently a center turns in names to DHR, who sends them to the Georgia Bureau of Investigation (GBI), which returns them to DHR. See *id.* DHR then reviews them and reports to the center about eight to ten weeks later. See *id.* Therefore, centers cannot find out if they are employing a criminal for at least two months after hiring an employee. See *id.*

11. See *id.*

12. O.C.G.A. § 49-5-60(5.1) (Supp. 1999); see SB 165 (FA 1, Hecht), 1999 Ga. Gen. Assem. Senator Hecht of the 34th District also offered an amendment to SB 165 that contained the same language regarding temporary emergency employees. See *id.*

13. See O.C.G.A. § 49-5-67(b) (Supp. 1999).

14. See *id.*

15. See *id.*

to five days in an emergency situation while waiting for results of the preliminary records check.¹⁶ At the end of the five days or upon receipt of the result of the check, the employee must satisfy the same requirements as all other employees.¹⁷ The Committee substitute also eased the impact on childcare centers by making it illegal for a director to *hire* a person without a satisfactory preliminary records check; however, the Act does not make it a violation to *have* an employee who has not satisfied a preliminary records check.¹⁸ In other words, current employees would be grandfathered into existing licenses.¹⁹

Provisions for Family Daycare in Homes

The Committee also added a Code section to provide that individuals who live in homes used for family daycare do not have to apply for records checks if the operator provides an affidavit stating that the individual will not be in the home when children are being watched.²⁰

From Fingerprint Check to Preliminary Records Check for Employees

The House Committee substitute, which both chambers adopted, provides that potential employees, other than a director, can begin working when they have received a satisfactory preliminary records check by local police; the Act does not require them to obtain any fingerprint checks.²¹ However, if the records check uncovers any criminal record, then the employee with the criminal history cannot begin working until he or she obtains a satisfactory state fingerprint records check, and, then only while a federal fingerprint records check was pending.²²

16. *See id.*

17. *See id.*

18. *Compare* HB 30, as introduced, 1999 Ga. Gen. Assem., *with* HB 30 (HCS), 1999 Ga. Gen. Assem.

19. *Compare* HB 30 (SCS), 1998 Ga. Gen. Assem., *with* HB 30 (HCS), 1998 Ga. Gen. Assem.

20. *See* O.C.G.A. § 49-5-67(a) (Supp. 1999); *see also* Interview with Normer Adams, Exec. Dir. Georgia Ass'n of Homes and Services for Children (Mar. 12, 1999) [hereinafter Adams Interview]. Mr. Adams stated that his organization wanted to be included in the bill's definition of "center" so that they could benefit from the access to information on potential employees. *See id.*

21. *See* O.C.G.A. § 49-5-69(a) (Supp. 1999).

22. *See id.*

Under the Committee substitute, a violation of the Act constitutes a misdemeanor only if the employee's criminal record was one "that renders the employee ineligible to have contact with children in the center."²³

Broadening the Application of the Acts

The Acts were broadened to make it clear to legislators that they would apply not only to daycare centers, but also to group daycare homes, family daycare homes, and child-caring institutions.²⁴ The words "daycare center" were changed to "the center," and "center" was changed to "facility."²⁵ The original use of the term "daycare center" excluded other childcare institutions that could also benefit from the preliminary check on employees who work with children.²⁶

Ratification of the National Crime Prevention and Privacy Compact

Before the Senate adopted the House Committee substitute, it adopted a floor amendment by Senators Mike Crotts of the 17th District and Hecht.²⁷ This amendment added definitions applicable to compliance with the National Crime Prevention and Privacy Compact (Compact) established by section 217 of the Federal law.²⁸ The Federal law was "ratified, enacted, and entered into by the State of Georgia."²⁹ The Compact is operative upon approval of the United States Attorney General.³⁰ The Director of GCIC was appointed as the Compact Officer in the state.³¹ Administration includes rule compliance and regulating the in-state use of records from the FBI.³² The GCIC was authorized to establish and maintain a repository of information and records for

23. Compare *id.* § 49-5-69(e), with HB 30, as introduced, 1999 Ga. Gen. Assem., and 1985 Ga. Laws 963, § 1, at 972 (formerly found at O.C.G.A. § 49-5-69(a) (1998)).

24. Compare HB 30, as introduced, 1999 Ga. Gen. Assem., with HB 30 (HCS), 1999 Ga. Gen. Assem. This is also the current definition for "centers" under Georgia law. See O.C.G.A. § 49-5-60(1) (Supp. 1999).

25. Compare HB 30, as introduced, 1999 Ga. Gen. Assem., with HB 30 (HCS), 1999 Ga. Gen. Assem.

26. See Adams Interview, *supra* note 20. Mr. Adams objected to the broad definition of "crime," which would exclude potential employees who had very old convictions under DHR standards. See *id.*

27. See State of Georgia Final Composite Status Sheet, May 3, 1999.

28. See O.C.G.A. § 35-3-39.1(b) (Supp. 1999); 42 U.S.C. §§ 14601 n.1, 14611-14616 (1999).

29. O.C.G.A. § 35-3-39.1(b) (Supp. 1999).

30. See *id.*

31. See *id.* § 35-3-39.1(c).

32. See *id.*

the National Identification Index and the National Fingerprint File—Georgia's III system index.³³ The Act also required GCIC to comply with Federal III system rules and procedures concerning the control of data, response times, data quality, system security, accuracy, and privacy protection.³⁴ The Act authorizes the center to provide all unsealed criminal history records to criminal justice agencies and other governmental and nongovernmental agencies as required by the Compact.³⁵

Criminal Information for Placement Agencies

The floor amendment to SB 165 authorized DHR or any licensed child-placing agency to receive conviction data from any law enforcement agency concerning anyone residing in a home where DHR might place a child in its custody.³⁶ Georgia law previously only allowed DHR to use conviction data in making employment decisions.³⁷ This information may now be viewed not only by any person or agency with a legal right to inspect employment files, but also by anyone who has a legal right to view department or licensed child-placing agency files.³⁸

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33. *See id.* § 35-3-39.1(d).

34. *See id.* § 35-3-39.1(e).

35. *See id.* § 35-3-39.1(h).

36. *See id.* § 49-2-14(b).

37. *See id.* § 49-2-14(d).

38. *See id.*