

House Bill 507

By: Representatives Oliver of the 82nd, Willard of the 51st, Jacobs of the 80th, Fleming of the 121st, and Ballinger of the 23rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to
2 programs and protection for children, so as to repeal certain provisions deemed
3 unconstitutional regarding a central child abuse registry; to enact new provisions to provide
4 for the establishment of a central child abuse registry; to provide for definitions; to provide
5 for the reporting of convictions relating to child abuse to the Division of Family and Children
6 Services; to provide for entry of reported convictions into the registry; to provide for a
7 hearing to contest inclusion of a name in the registry; to limit access to information in the
8 registry; to provide for confidentiality; to provide for immunity; to provide for related
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to programs and
13 protection for children, is amended by repealing Article 8, relating to the central child abuse
14 registry, and enacting a new article to read as follows:

15 "ARTICLE 8

16 49-5-180.

17 As used in this article, the term:

18 (1) 'Abuse investigator' means the division, any county or district department of family
19 and children services, any law enforcement agency, or any district attorney or designee
20 thereof. The term also includes coroners, medical examiners, and out-of-state abuse
21 investigators.

22 (2) 'Child' means any person under 18 years of age.

23 (3) 'Child abuse' has the same meaning as in paragraph (4) of subsection (b) of Code
24 Section 19-7-5.

- 25 (4) 'Child abuse crime' means:
- 26 (A) A violation of Article 1 or Article 2 of Chapter 5 of Title 16 or subsections (b) or
- 27 (c) of Code Section 16-5-70, in which physical injury or death is inflicted on a minor
- 28 child by a parent or caretaker thereof by other than accidental means;
- 29 (B) A violation of Code Section 16-12-1 regarding a minor child by a parent or
- 30 caretaker thereof;
- 31 (C) A violation of Chapter 6 of Title 16 in which the victim is a minor;
- 32 (D) A violation of Part 2 of Article 3 of Chapter 12 of Title 16; or
- 33 (E) Any other crime that, in the discretion of the prosecuting attorney, constitutes child
- 34 abuse.
- 35 (5) 'Child abuse registry' means the Child Protective Services Information System
- 36 established pursuant to Code Section 49-5-181.
- 37 (6) 'Convicted' means a finding or verdict of guilty or a plea of guilty regardless of
- 38 whether an appeal of the conviction has been sought. Such term also includes having
- 39 been arrested, charged, and sentenced for the commission of a child abuse crime for
- 40 which:
- 41 (A) A plea of nolo contendere was entered to the charge; or
- 42 (B) First offender treatment without adjudication of guilt pursuant to the charge was
- 43 granted. The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title
- 44 42, relating to probation of first offenders, or other first offender treatment shall be
- 45 conclusive evidence of arrest and sentencing for such crime.
- 46 (7) 'Convicted child abuser' means a person who is convicted of a child abuse crime.
- 47 (8) 'Division' means the Division of Family and Children Services of the Department of
- 48 Human Services.
- 49 (9) 'Out-of-state abuse investigator' means a public child protective agency or law
- 50 enforcement agency of any other state bound by confidentiality requirements as to
- 51 information obtained under this article which are similar to those provided in this article.
- 52 (10) 'Sexual abuse' has the same meaning as in paragraph (10) of subsection (b) of Code
- 53 Section 19-7-5.
- 54 (11) 'Sexual exploitation' has the same meaning as in paragraph (11) of subsection (b)
- 55 of Code Section 19-7-5.
- 56 49-5-181.
- 57 (a) The division shall establish and maintain a central child abuse registry which shall
- 58 receive notice regarding convicted child abusers pursuant to Code Section 49-5-182 and
- 59 which shall be known as the 'Child Protective Services Information System.'

60 (b) The child abuse registry shall be operated in such a manner as to enable abuse
 61 investigators to:

62 (1) Immediately identify and locate convicted child abusers; and

63 (2) Maintain and produce aggregate statistical data of cases of child abuse in which a
 64 person was convicted.

65 49-5-182.

66 Upon receipt of a sentence in which a person is convicted of a child abuse crime, the
 67 prosecuting attorney shall notify the division within 30 working days following such
 68 receipt. Such notice may be submitted electronically and shall contain the following
 69 documents:

70 (1) A certified copy of the sentence;

71 (2) A complete history of the convicted child abuser, including a certified copy of the
 72 indictment, accusation, or both and such other information as the division may require;

73 (3) Name, age, sex, race, social security number, and birthdate of the victim of child
 74 abuse by the convicted child abuser, if known; and

75 (4) Name, age, sex, race, social security number, and birthdate of the child's parents,
 76 custodian, or caretaker, if known.

77 49-5-183.

78 (a) Upon receipt of a notice from a prosecuting attorney pursuant to Code Section
 79 49-5-182, the division shall include in the child abuse registry the name of the convicted
 80 child abuser, the offense for which he or she was convicted, and whether the offense is
 81 considered physical abuse, neglect or exploitation, sexual abuse, or sexual exploitation.

82 (b) Any person whose name appears in the child abuse registry shall be entitled to a
 83 hearing for an administrative determination of whether or not expungement of such
 84 person's name should be ordered. In order to exercise such right, the person must file a
 85 written request for a hearing with the division. The provisions of this subsection shall not
 86 apply to persons who have waived their hearing after receipt of notice.

87 (c) Upon receipt by the division of a written request for a hearing pursuant to subsection
 88 (b) of this Code section, the division shall transmit such request to the Office of State
 89 Administrative Hearings within ten days of receipt. The Office of State Administrative
 90 Hearings shall conduct a hearing in accordance with Chapter 13 of Title 50, the 'Georgia
 91 Administrative Procedure Act,' except as otherwise provided in this Code section. A
 92 hearing shall be conducted within 60 days following receipt of the request by the Office
 93 of State Administrative Hearings. Upon a finding that there is no credible evidence that
 94 the person who requested the hearing is a convicted child abuser, the Office of State

95 Administrative Hearings shall order the division to expunge that name from the registry.
96 The general public shall be excluded from such hearings and the files and records relating
97 thereto shall be confidential and not subject to public inspection.
98 (d) Notwithstanding any other provision of law, the decision of the Office of State
99 Administrative Hearings pursuant to subsection (c) of this Code section shall constitute the
100 final agency decision. Any party shall have the right of judicial review of that decision in
101 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except
102 that the petition for review shall be filed within 30 days after such decision and may only
103 be filed with and the decision appealed to the superior court of the county where the
104 hearing took place or, if the hearing was conducted by telephone, the Superior Court of
105 Fulton County. The procedures for such appeal shall be the same as those for judicial
106 review of contested cases under Code Section 50-13-19. The review and records thereof
107 shall be closed to the public and not subject to public inspection. The decision of the
108 superior court under this subsection shall not be subject to further appeal or review.

109 49-5-184.

110 (a) Except as otherwise authorized in subsection (c) of this Code section and subsection
111 (b) of Code Section 49-5-185, only an abuse investigator who has investigated or is
112 investigating a case of possible child abuse shall be provided any information from the
113 child abuse registry and shall only be provided information relating to that case for
114 purposes of using that information in such investigation.

115 (b) The division shall provide the Governor's office, the General Assembly, district
116 attorneys, and law enforcement agencies with a statistical analysis of convicted child
117 abusers entered into the child abuse registry at the end of each calendar year. This analysis
118 shall not include the names of any children, parents, or persons associated with the child
119 abuse. This analysis shall not be protected by any laws prohibiting the dissemination of
120 confidential information.

121 (c) A person may make a written request to the division to find out whether such person's
122 name is included in the child abuse registry. Upon presentation of a passport, military
123 identification card, driver's license, or identification card authorized under Code Sections
124 40-5-100 through 40-5-104, the office receiving such request shall disclose to such person
125 whether that person's name is included in the child abuse registry and, if so, the date upon
126 which the person's name was listed in the registry and the child abuse crime for which the
127 person was convicted.

128 49-5-185.

129 (a) Information in the child abuse registry shall be confidential and access thereto is
130 prohibited except as provided in this article. Such information shall not be deemed to be
131 a record of child abuse for purposes of Article 2 of this chapter.

132 (b)(1) Information obtained from the child abuse registry shall not be made a part of any
133 record which is open to the public except as provided in paragraph (2) of this subsection;
134 provided, however, that a district attorney may use such information in any court
135 proceeding in the course of any criminal prosecution for any offense which constitutes
136 or results from child abuse, if such information is otherwise admissible.

137 (2) Notwithstanding any other provisions of law, information in the child abuse registry
138 applicable to a child who at the time of his or her death was in the custody of a state
139 department or agency or foster parent, which information relates to the child while in the
140 custody of such state department or agency or foster parent, shall not be confidential and
141 shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

142 (c) Any person who knowingly provides any information from the child abuse registry to
143 a person not authorized to be provided such information under this article shall be guilty
144 of a misdemeanor.

145 (d) Any person who knowingly and under false pretense obtains or attempts to obtain
146 information which was obtained from the child abuse registry, except as authorized in this
147 article, shall be guilty of a misdemeanor.

148 49-5-186.

149 The division and employees thereof providing information from the child abuse registry
150 as authorized by this article and any person who uses such information from the child abuse
151 registry as authorized by this article shall have no civil or criminal liability therefor."

152 **SECTION 2.**

153 All laws and parts of laws in conflict with this Act are repealed.