

House Bill 905 (AS PASSED HOUSE AND SENATE)

By: Representatives Ballinger of the 23rd, Oliver of the 82nd, Dempsey of the 13th, Efstration of the 104th, Reeves of the 34th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 16, Title 19, and Chapter 5 of Title 49 of the
2 Official Code of Georgia Annotated, relating to justification and excuse, domestic relations,
3 and programs and protection for children and youth, respectively, so as to change provisions
4 relating to child abuse and the protection of children and youth; to provide for immunity
5 from criminal liability for possession of certain materials or images under certain
6 circumstances; to change and provide for defined terms; to change provisions relating to
7 protocol committees on child abuse; to establish a public scorecard for child welfare agencies
8 under the Department of Human Services; to define certain terms; to increase fines for
9 certain offenses; to provide that the department shall coordinate contract and licensure
10 compliance inspections for any affected agency or division including the Division of Family
11 and Children Services, the Department of Juvenile Justice, the Department of Behavioral
12 Health and Developmental Disabilities, and the Department of Community Health; to remove
13 certain reporting requirements to the child abuse registry; to provide for related matters; to
14 provide for effective dates; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 SECTION 1.

17 Article 2 of Chapter 3 of Title 16 of the Official Code of Georgia Annotated, relating to
18 justification and excuse, is amended by adding a new Code section to read as follows:

19 "16-3-22.1.

20 (a) Any person that in good faith has possession of materials or images in violation of
21 Article 3 of Chapter 12 of this title and immediately notifies law enforcement officials or
22 any person that is required by Code Section 19-7-5 to report suspected child abuse, or
23 makes such notification within 72 hours from the time there is reasonable cause to believe
24 such person is in possession of such materials or images, shall be immune to the same
25 extent as a law enforcement officer would be immune from criminal liability for such
26 possession.

27 (b) The official report of the law enforcement agency or the Division of Family and
 28 Children Services of the Department of Human Services shall create a rebuttable
 29 presumption of good faith and reasonableness on the part of the person that has possession.
 30 (c) The purpose of this Code section is to provide for those persons that act in good faith
 31 to assist law enforcement officers or the Division of Family and Children Services of the
 32 Department of Human Services when the health and safety of a child are being adversely
 33 affected and threatened by the conduct of another. This Code section shall be liberally
 34 construed so as to carry out the purposes thereof."

35 **SECTION 2.**

36 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
 37 amended by revising subsection (b) of Code Section 19-7-5, relating to reporting of child
 38 abuse, as follows:

39 "(b) As used in this Code section, the term:

40 (1) 'Abortion' shall have the same meaning as set forth in Code Section 15-11-681.

41 (2) 'Abused' means subjected to child abuse.

42 (3) 'Child' means any person under 18 years of age.

43 (4) 'Child abuse' means:

44 (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by
 45 other than accidental means; provided, however, that physical forms of discipline may
 46 be used as long as there is no physical injury to the child;

47 (B) Neglect or exploitation of a child by a parent or caretaker thereof;

48 (C) Endangering a child;

49 ~~(D)~~ Sexual abuse of a child; or

50 ~~(E)~~ Sexual exploitation of a child.

51 However, no child who in good faith is being treated solely by spiritual means through
 52 prayer in accordance with the tenets and practices of a recognized church or religious
 53 denomination by a duly accredited practitioner thereof shall, for that reason alone, be
 54 considered to be an ~~'abused'~~ abused child.

55 (5) 'Child service organization personnel' means persons employed by or volunteering
 56 at a business or an organization, whether public, private, for profit, not for profit, or
 57 voluntary, that provides care, treatment, education, training, supervision, coaching,
 58 counseling, recreational programs, or shelter to children.

59 (6) 'Clergy' means ministers, priests, rabbis, imams, or similar functionaries, by whatever
 60 name called, of a bona fide religious organization.

61 (6.1) 'Endangering a child' means:

62 (A) Any act described by subsection (d) of Code Section 16-5-70;

63 (B) Any act described by Code Section 16-5-73;

64 (C) Any act described by subsection (l) of Code Section 40-6-391; or

65 (D) Prenatal abuse, as such term is defined in Code Section 15-11-2.

66 (7) 'Pregnancy resource center' means an organization or facility that:

67 (A) Provides pregnancy counseling or information as its primary purpose, either for a
68 fee or as a free service;

69 (B) Does not provide or refer for abortions;

70 (C) Does not provide or refer for FDA approved contraceptive drugs or devices; and

71 (D) Is not licensed or certified by the state or federal government to provide medical
72 or health care services and is not otherwise bound to follow the federal Health
73 Insurance Portability and Accountability Act of 1996, P.L. 104-191, or other state or
74 federal laws relating to patient confidentiality.

75 (8) 'Reproductive health care facility' means any office, clinic, or any other physical
76 location that provides abortions, abortion counseling, abortion referrals, or gynecological
77 care and services.

78 (9) 'School' means any public or private pre-kindergarten, elementary school, secondary
79 school, technical school, vocational school, college, university, or institution of
80 postsecondary education.

81 (10) 'Sexual abuse' means a person's employing, using, persuading, inducing, enticing,
82 or coercing any minor who is not ~~that~~ such person's spouse to engage in any act which
83 involves:

84 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
85 oral-anal, whether between persons of the same or opposite sex;

86 (B) Bestiality;

87 (C) Masturbation;

88 (D) Lewd exhibition of the genitals or pubic area of any person;

89 (E) Flagellation or torture by or upon a person who is nude;

90 (F) Condition of being fettered, bound, or otherwise physically restrained on the part
91 of a person who is nude;

92 (G) Physical contact in an act of apparent sexual stimulation or gratification with any
93 person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed
94 or unclothed breasts;

95 (H) Defecation or urination for the purpose of sexual stimulation; or

96 (I) Penetration of the vagina or rectum by any object except when done as part of a
97 recognized medical procedure.

98 ~~'Sexual abuse'~~ Sexual abuse shall ~~not~~ include consensual sex acts ~~involving persons of the~~
99 ~~opposite sex~~ when the sex acts are between minors or if any individual is less than 14

100 years of age; provided, however, that it shall not include consensual sex acts when the sex
 101 acts are between a minor and an adult who is not more than ~~five~~ four years older than the
 102 minor. This provision shall not be deemed or construed to repeal any law concerning the
 103 age or capacity to consent.

104 (11) 'Sexual exploitation' means conduct by any person who allows, permits, encourages,
 105 or requires ~~that~~ a child to engage in:

106 (A) Prostitution, as defined in Code Section 16-6-9; or

107 (B) Sexually explicit conduct for the purpose of producing any visual or print medium
 108 depicting such conduct, as defined in Code Section 16-12-100."

109 SECTION 3.

110 Said title is further amended by revising Code Section 19-15-1, relating to definitions for
 111 child abuse, as follows:

112 "19-15-1.

113 As used in this chapter, the term:

114 (1) 'Abused' means subjected to child abuse.

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

116 (3) 'Child abuse' means:

117 (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by
 118 other than accidental means; provided, however, that physical forms of discipline may
 119 be used as long as there is no physical injury to the child;

120 (B) Neglect or exploitation of a child by a parent or caretaker thereof;

121 (C) Sexual abuse of a child; or

122 (D) Sexual exploitation of a child.

123 (4) 'Child advocacy center' means an entity which is operated for the purposes of
 124 investigating known or suspected child abuse and treating a child or a family that is the
 125 subject of a report of child abuse and which:

126 (A) Has been created and supported through one or more intracommunity compacts
 127 between such center and:

128 (i) One or more law enforcement agencies within this state; any other state; the
 129 United States, including its territories, possessions, and dominions; or a foreign
 130 nation;

131 (ii) The office of the district attorney, Attorney General, or United States Attorney
 132 General;

133 (iii) A legally mandated public or private child protective agency within this state;
 134 any other state; the United States, including its territories, possessions, and
 135 dominions; or a foreign nation;

- 136 (iv) A mental health board within this state; any other state; the United States,
 137 including its territories, possessions, and dominions; or a foreign nation; or
 138 (v) A community health service board within this state; any other state; the United
 139 States, including its territories, possessions, and dominions; or a foreign nation; and
 140 (B) Has been approved by a protocol committee.

141 ~~(4)~~(5) 'Child protection professional' means any person who is employed by the state or
 142 a political subdivision of the state as a law enforcement officer, school teacher, school
 143 administrator, or school counselor or who is employed to render services to children by
 144 the Department of Public Health, the Department of Behavioral Health and
 145 Developmental Disabilities, or the Department of Human Services or any county board
 146 of health, community service board, or county department of family and children
 147 services.

148 ~~(5) Reserved.~~

149 (6) 'Investigation' in the context of child death includes all of the following:

150 (A) A post-mortem examination which may be limited to an external examination or
 151 may include an autopsy;

152 (B) An inquiry by law enforcement agencies having jurisdiction into the circumstances
 153 of the death, including a scene investigation and interview with the child's parents,
 154 guardian, or caretaker and the person who reported the child's death; and

155 (C) A review of information regarding the child and family from relevant agencies,
 156 professionals, and providers of medical care.

157 (7) 'Panel' means the Georgia Child Fatality Review Panel established pursuant to Code
 158 Section 19-15-4.

159 (8) 'Protocol committee' means a multidisciplinary, multiagency committee established
 160 ~~for a county~~ pursuant to Code Section 19-15-2.

161 (9) 'Report' means a standardized form designated by the panel which is required for
 162 collecting data on child fatalities reviewed by local child fatality review committees.

163 (10) 'Review committee' means a multidisciplinary, multiagency child fatality review
 164 committee established for a county or circuit pursuant to Code Section 19-15-3.

165 (11) 'Sexual abuse' means a person's employing, using, persuading, inducing, enticing,
 166 or coercing any minor who is not ~~that~~ such person's spouse to engage in any act which
 167 involves:

168 (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or
 169 oral-anal, whether between persons of the same or opposite sex;

170 (B) Bestiality;

171 (C) Masturbation;

172 (D) Lewd exhibition of the genitals or pubic area of any person;

- 173 (E) Flagellation or torture by or upon a person who is nude;
 174 (F) Condition of being fettered, bound, or otherwise physically restrained on the part
 175 of a person who is nude;
 176 (G) Physical contact in an act of apparent sexual stimulation or gratification with any
 177 person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed
 178 or unclothed breasts;
 179 (H) Defecation or urination for the purpose of sexual stimulation; or
 180 (I) Penetration of the vagina or rectum by any object except when done as part of a
 181 recognized medical procedure.

182 ~~'Sexual abuse'~~ Sexual abuse shall not include consensual sex acts involving persons of the
 183 ~~opposite sex~~ when the sex acts are between minors ~~or if any individual is less than 14~~
 184 years of age; provided, however, that it shall not include consensual sex acts when the sex
 185 acts are between a minor and an adult who is not more than ~~three~~ four years older than
 186 the minor. This provision shall not be deemed or construed to repeal any law concerning
 187 the age or capacity to consent.

188 (12) 'Sexual exploitation' means conduct by any person who allows, permits, encourages,
 189 or requires ~~that a~~ child to engage in:

- 190 (A) Prostitution, as defined in Code Section 16-6-9; or
 191 (B) Sexually explicit conduct for the purpose of producing any visual or print medium
 192 depicting such conduct, as defined in Code Section 16-12-100."

193 **SECTION 4.**

194 Said title is further amended by revising Code Section 19-5-2, relating to protocol committee
 195 on child abuse, as follows:

196 "19-15-2.

197 (a) ~~Each~~ Except as provided in paragraph (3) of subsection (b) of this Code section, each
 198 county shall be required to establish a protocol for the investigation and prosecution of
 199 alleged cases of child abuse as provided in this Code section.

200 (b)(1) The chief superior court judge of the circuit in which the county is located shall
 201 establish a protocol committee as provided in subsection (c) of this Code section and shall
 202 appoint an interim chairperson who shall preside over the first meeting, and the chief
 203 superior court judge shall appoint persons to fill any vacancies on the protocol committee.

204 (2) After the establishment of a ~~Thus established, the~~ protocol committee ~~shall thereafter,~~
 205 the committee members shall elect a chairperson from ~~its~~ the protocol committee's
 206 membership. The protocol committee shall be charged with developing local protocols
 207 for the investigation and prosecution of alleged cases of child abuse.

208 (3) When a judicial circuit is composed of more than one county, the protocol committee
 209 shall determine if it shall be established for each county in the judicial circuit or if it will
 210 serve all of the counties within the judicial circuit.

211 (c)(1) Each of the following individuals, agencies, and entities shall designate a
 212 representative to serve on ~~the~~ a protocol committee established pursuant to paragraph (1)
 213 of subsection (b) of this Code section:

- 214 (A) The sheriff;
- 215 (B) The county department of family and children services;
- 216 (C) The district attorney for the judicial circuit;
- 217 (D) The presiding juvenile court judge;
- 218 (E) The chief magistrate;
- 219 (F) The county board of education;
- 220 (G) The county mental health organization;
- 221 (H) The chief of police of a county in counties which have a county police department;
- 222 (I) The chief of police of the largest municipality in the county;
- 223 (J) The county public health department, ~~which shall designate a physician to serve on~~
 224 ~~the protocol committee;~~ and
- 225 (K) The coroner or county medical examiner.

226 (2) Each of the following individuals, agencies, and entities shall designate a
 227 representative to serve on a protocol committee established pursuant to paragraph (3) of
 228 subsection (b) of this Code section:

- 229 (A) The sheriff of each county in the judicial circuit;
- 230 (B) The county department of family and children services of each county in the
 231 judicial circuit;
- 232 (C) The district attorney for the judicial circuit;
- 233 (D) The presiding juvenile court judge of each county in the judicial circuit;
- 234 (E) The chief magistrate of each county in the judicial circuit;
- 235 (F) Each board of education in the judicial circuit;
- 236 (G) The county mental health organization of each county in the judicial circuit;
- 237 (H) The chief of police of each county in the judicial circuit, if any;
- 238 (I) The chief of police of the largest municipality in the judicial circuit;
- 239 (J) The county public health department of each county in the judicial circuit; and
- 240 (K) The coroner or county medical examiner of each county in the judicial circuit.

241 (3) A representative of a local child advocacy center shall serve on a protocol committee
 242 established under paragraph (1) or (3) of subsection (b) of this Code section if one exists
 243 in such location.

244 (4) A representative of a sexual assault center shall serve on a protocol committee
 245 established under paragraph (1) or (3) of subsection (b) of this Code section if one exists
 246 in such location.

247 ~~(2)~~(5) In addition to the representatives serving on the protocol committee as provided
 248 for in ~~paragraph~~ paragraphs (1) through (4) of this subsection, the chief superior court
 249 judge shall designate a representative from a local citizen or advocacy group which
 250 focuses on child abuse awareness and prevention to serve on such protocol committee.

251 ~~(3)~~(6) If any designated agency fails to carry out its duties relating to participation on the
 252 protocol committee, the chief superior court judge of the circuit may issue an order
 253 requiring the participation of such agency. Failure to comply with such order shall be
 254 cause for punishment as for contempt of court.

255 (d) Each protocol committee ~~shall elect or appoint~~ a chairperson ~~who~~ shall be responsible
 256 for ensuring that written protocol procedures are followed by all agencies. Such person ~~can~~
 257 may be independent of agencies listed in paragraph (1) of subsection (c) of this Code
 258 section. The protocol committee may appoint such additional members as necessary and
 259 proper to accomplish the purposes of the protocol committee.

260 (e) The protocol committee shall adopt a written protocol which shall be filed with the
 261 Division of Family and Children Services of the Department of Human Services and the
 262 ~~panel~~ Office of the Child Advocate for the Protection of Children, a copy of which shall
 263 be furnished to each agency in the county handling the cases of abused children. The
 264 protocol shall be a written document outlining in detail the procedures to be used in
 265 investigating and prosecuting cases arising from alleged child abuse and the methods to be
 266 used in coordinating treatment programs for the perpetrator, the family, and the child. The
 267 protocol shall also outline procedures to be used when child abuse occurs in a household
 268 where there is violence between past or present spouses, persons who are parents of the
 269 same child, parents and children, stepparents and stepchildren, foster parents and foster
 270 children, or other persons living or formerly living in the same household. The protocol
 271 adopted shall not be inconsistent with the policies and procedures of the Division of Family
 272 and Children Services of the Department of Human Services.

273 (f) The purpose of the protocol shall be to ensure coordination and cooperation between
 274 all agencies involved in a child abuse case so as to increase the efficiency of all agencies
 275 handling such cases, to minimize the stress created for the allegedly abused child by the
 276 legal and investigatory process, and to ensure that more effective treatment is provided for
 277 the perpetrator, the family, and the child, including counseling.

278 (g) Upon completion of the writing of the protocol, the protocol committee shall continue
 279 in existence and shall meet at least semiannually for the purpose of evaluating the
 280 effectiveness of the protocol and appropriately modifying and updating the same. The

281 protocol committee shall file the updated protocol with the Division of Family and
 282 Children Services of the Department of Human Services and the Office of the Child
 283 Advocate for the Protection of Children not later than the first day of September each year.

284 (h) Each protocol committee shall adopt or amend its written protocol to specify the
 285 circumstances under which law enforcement officers shall and shall not be required to
 286 accompany investigators from the county department of family and children services when
 287 these investigators investigate reports of child abuse. In determining when law
 288 enforcement officers shall and shall not accompany investigators, the protocol committee
 289 shall consider the need to protect the alleged victim and the need to preserve the
 290 confidentiality of the report. Each protocol committee shall establish joint work efforts
 291 between the law enforcement and investigative agencies in child abuse investigations. The
 292 adoption or amendment of the protocol shall also describe measures which can be taken
 293 within the county or circuit, as the case may be, to prevent child abuse and shall be filed
 294 with and furnished to the same entities with or to which an original protocol is required to
 295 be filed or furnished. The protocol shall be further amended to specify procedures to be
 296 adopted by the protocol committee to ensure that written protocol procedures are followed.

297 (i) The protocol committee shall issue a report no later than the first day of July each year.
 298 Such report shall evaluate the extent to which investigations of child abuse during the 12
 299 months prior to the report have complied with the protocols of the protocol committee,
 300 recommend measures to improve compliance, and describe which measures taken within
 301 the county or circuit, as the case may be, to prevent child abuse have been successful. The
 302 report shall be transmitted to the county governing authority, the fall term grand jury of the
 303 judicial circuit, the ~~panel~~ Office of the Child Advocate for the Protection of Children, and
 304 the chief superior court judge of the circuit.

305 (j) Each member of each protocol committee shall receive appropriate training within 12
 306 months after his or her appointment. The Office of the Child Advocate for the Protection
 307 of Children shall provide such training.

308 (k) The protocol committee shall ~~adopt~~ include a written sexual abuse and sexual
 309 exploitation section within its protocol which shall be filed with the Division of Family and
 310 Children Services of the Department of Human Services and the Office of the Child
 311 Advocate for the Protection of Children, a copy of which shall be furnished to each agency
 312 in the county handling the cases of sexually abused or exploited children. The sexual abuse
 313 and sexual exploitation section of the protocol shall be a written document outlining outline
 314 in detail the procedures to be used in investigating and prosecuting cases arising from
 315 alleged sexual abuse and sexual exploitation and the procedures to be followed concerning
 316 the obtainment of and payment for sexual assault examinations. ~~Each protocol committee~~
 317 ~~shall adopt or amend its written sexual abuse and sexual exploitation protocol.~~ The sexual

318 abuse and sexual exploitation section of the protocol adopted shall be consistent with the
 319 policies and procedures of the Division of Family and Children Services of the Department
 320 of Human Services. ~~A~~ The sexual abuse and sexual exploitation section of the protocol is
 321 not intended to, does not, and may not be relied upon to create any rights, substantive or
 322 procedural, enforceable at law by any party in any matter civil or criminal. Such section
 323 of the protocol shall not limit or otherwise restrict a prosecuting attorney in the exercise of
 324 his or her discretion nor in the exercise of any otherwise lawful litigative prerogatives."

325 **SECTION 5.**

326 Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to programs and
 327 protection for children and youth, is amended by adding a new Code section to read as
 328 follows:

329 "49-5-4.1.

330 (a) As used in this Code section, the term:

331 (1) 'Affected agency' means any state agency, department, division, or office which
 332 requires a license or commission from the department for child welfare agencies,
 333 including, but not limited to, the Division of Family and Children Services, Department
 334 of Human Services, Department of Juvenile Justice, Department of Behavioral Health
 335 and Developmental Disabilities, or Department of Community Health.

336 (2) 'Child welfare agency' means any child-caring institution, child-placing agency,
 337 children's transition care center, or maternity home.

338 (3) 'Services' means direct care, treatment, custodial responsibilities, or any combination
 339 thereof provided for children.

340 (b) The Department of Human Services, in conjunction with other affected agencies and
 341 representatives of child welfare agencies, shall establish a child welfare agency public
 342 scorecard to score child welfare agencies. Affected agencies shall cooperate with the
 343 department to develop and establish the child welfare agency public scorecard.

344 (c) The public scorecard for child welfare agencies and any explanation for the basis of
 345 any score on the scorecard shall be published in a single location on a website for public
 346 review. Such website shall provide scores for each child welfare agency by the affected
 347 agency that is responsible for the regulation of or contracting with each particular child
 348 welfare agency. The score shall be posted within 30 days of the completion of an
 349 inspection or, if appealed pursuant to subsection (e) of this Code section, the revised score,
 350 if any, shall be posted within 30 days of the conclusion of the appeal.

351 (d) The scores shall be based on an established published formula with weight
 352 appropriately given for each agency's compliance or noncompliance with applicable laws;
 353 rules; contracts; court orders; measures of treatment; behavioral, vocational, and

354 educational outcomes for persons receiving services; and other pertinent information, based
 355 on empirical evidence to the greatest extent possible.
 356 (e) The department shall provide child welfare agencies with advanced written notice of
 357 the scores to be posted. A child welfare agency may contest a score in accordance with
 358 department rules by filing a written appeal with the department within ten days from
 359 receipt of such notice. If a child welfare agency contests such score, the department shall
 360 note on the website that the score is under appeal, until such appeal is concluded. Within
 361 ten days of receipt of a child welfare agency's written contest of a score, the department
 362 shall hold a meeting with the child welfare agency and any affected agency whose score
 363 is contested. The meeting shall be for the parties to discuss the score and basis for the
 364 score. Within 30 days after the meeting, the commissioner's designee shall issue written
 365 notice confirming or revising the score. After issuance of such written notice, the child
 366 welfare agency may contest the score as a contested case under Chapter 13 of Title 50, the
 367 'Georgia Administrative Procedure Act,' except that hearings held relating to such action
 368 by the department may be closed to the public if the hearing officer determines that an open
 369 hearing would be detrimental to the physical or mental health of any child who will testify
 370 at such hearing.
 371 (f) In consultation with other affected agencies, the department shall promulgate rules and
 372 regulations consistent with this Code section, including establishing criteria which must be
 373 met in order for a child welfare agency to contest or appeal a score.
 374 (g) Nothing in this Code section shall be construed to affect the ability of any affected
 375 agency, in its sole discretion, to contract with any child welfare agency or to exercise the
 376 rights of the affected agency under the terms and conditions of any existing contract with
 377 a child welfare agency."

378 **SECTION 6.**

379 Said chapter is further amended by revising subsections (p) and (q) of Code Section 49-5-12,
 380 relating to licensing and inspection of child welfare agencies, standards, revocation or refusal
 381 to license, penalties, and violations, as follows:

382 "(p) Any child welfare agency that shall operate without a license or commission issued
 383 by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be
 384 punished by a fine of not less than ~~\$50.00~~ \$500.00 nor more than ~~\$200.00~~ \$1,000.00 for
 385 each such offense. Each day of operation without a license or commission shall constitute
 386 a separate offense.

387 (q) No person, official, agency, hospital, maternity home, or institution, public or private,
 388 in this state shall receive or accept a child under 17 years of age for placement or adoption
 389 or place such a child, either temporarily or permanently, in a home other than the home of

390 the child's relatives without having been licensed or commissioned by the department.
 391 Notwithstanding the provisions of Code Section 49-5-12.1, violation of this subsection
 392 shall be punishable by a fine of not less than ~~\$100.00~~ \$500.00 nor exceeding ~~\$500.00~~
 393 \$1,000.00 for each offense. Nothing in this Code section shall be construed to prohibit a
 394 properly licensed attorney at law from providing necessary legal services and counsel to
 395 parties engaged in or contemplating adoption proceedings. Nothing in this Code section
 396 shall be construed to prohibit an individual seeking to:

397 (1) Adopt a child or children from receiving or accepting a child or children in the
 398 individual's home in anticipation of filing a petition for adoption under Article 1 of
 399 Chapter 8 of Title 19; or

400 (2) Have that individual's child or children placed for adoption from placing that
 401 individual's child or children in the home of an individual who is not related to the child
 402 or children in anticipation of the individual's initiation of adoption proceedings pursuant
 403 to Article 1 of Chapter 8 of Title 19."

404 SECTION 7.

405 Said chapter is further amended by adding a new Code section to read as follows:

406 "49-5-12.3.

407 (a) As used in this Code section, the term:

408 (1) 'Affected agency' means any state agency, department, division, or office which
 409 requires a license or commission from the department for child welfare agencies,
 410 including, but not limited to, the Division of Family and Children Services, the
 411 Department of Juvenile Justice, the Department of Behavioral Health and Developmental
 412 Disabilities, or the Department of Community Health.

413 (2) 'Annual inspection' means an inspection of a child welfare agency's facility, books,
 414 minutes, financial statements, files, employees, programs, and contracts to ensure
 415 contract compliance and licensure compliance.

416 (3) 'Child welfare agency' means any child-caring institution, child-placing agency,
 417 children's transition care center, or maternity home.

418 (4) 'Contract compliance' means adherence to the terms of a contract a child welfare
 419 agency has with an affected agency to provide child welfare services.

420 (5) 'Licensure compliance' means adherence to licensing or commissioning requirements
 421 established pursuant to and in accordance with Code Section 49-5-12.

422 (b) The department shall ensure that the annual inspection of each child welfare agency
 423 is performed by all affected agencies in a singular coordinated manner. Affected agencies
 424 shall not duplicate the annual inspection but shall cooperate and assist the department with

425 the annual inspection. Affected agencies shall share the results of annual inspection with
 426 other applicable affected agencies.

427 (c) The annual inspection shall not occur sooner than 330 days or later than 390 days after
 428 the date on which the last annual inspection began and shall not exceed five days. Affected
 429 agencies may reduce the extent of the annual inspection by reducing the frequency or the
 430 extent of the inspection for contract compliance when the child welfare agency has shown
 431 an exceptional history of contract compliance as determined upon past scores; provided,
 432 however, that such reduction does not violate federal law, court order, or settlement
 433 agreement.

434 (d) A child welfare agency may contest the results of an annual inspection, in accordance
 435 with department rules, by filing a written appeal with the affected agency within ten days
 436 of receipt of the affected agency's annual inspection report. Within ten days of receipt of
 437 a child welfare agency's written appeal of the annual inspection, the affected agency shall
 438 hold a meeting with the child welfare agency. The meeting shall be for the parties to
 439 discuss the annual inspection.

440 (e) The annual inspection shall not limit the ability of affected agencies and other state
 441 departments, divisions, and agencies to ensure the safety and well-being of children in the
 442 care of child welfare agencies or to inspect, investigate, or respond as required by court
 443 order, settlement agreement, or federal law.

444 (f) In consultation with other affected agencies, the department shall promulgate rules and
 445 regulations consistent with this Code section, including establishing criteria which must be
 446 met in order for a child welfare agency to contest or appeal an evaluation.

447 (g) Nothing in this Code section shall be construed to affect the ability of any affected
 448 agency, in its sole discretion, to contract with any child welfare agency or to exercise the
 449 rights of the affected agency under the terms and conditions of any existing contract with
 450 a child welfare agency."

451 **SECTION 8.**

452 Said chapter is further amended by revising Article 8, relating to the central child abuse
 453 registry, as follows:

454 "ARTICLE 8

455 49-5-180.

456 As used in this article, the term:

457 (1) 'Abuse investigator' means the division, any county ~~or district~~ department of family
 458 ~~and children services~~, or any designee thereof.

- 459 (2) 'Alleged child abuser' means ~~a person~~ an individual named in an abuse investigator's
 460 report as having committed a substantiated case.
- 461 (3) 'Child' means ~~any person~~ an individual under 18 years of age.
- 462 (4) 'Child abuse' ~~has~~ shall have the same meaning as in paragraph (4) of subsection (b)
 463 of Code Section 19-7-5.
- 464 (5) '~~Child abuse crime~~' means:
- 465 (A) ~~A violation of Article 1 or Article 2 of Chapter 5 of Title 16 or subsections (b) or~~
 466 ~~(c) of Code Section 16-5-70, in which physical injury or death is inflicted on a minor~~
 467 ~~child by a parent or caretaker thereof by other than accidental means;~~
- 468 (B) ~~A violation of Code Section 16-12-1 regarding a minor child by a parent or~~
 469 ~~caretaker thereof;~~
- 470 (C) ~~A violation of Chapter 6 of Title 16 in which the victim is a minor;~~
- 471 (D) ~~A violation of Part 2 of Article 3 of Chapter 12 of Title 16; or~~
- 472 (E) ~~Any other crime that, in the discretion of the prosecuting attorney, constitutes child~~
 473 ~~abuse.~~
- 474 (6)(5) 'Child abuse registry' means the Child Protective Services Information System.
- 475 (7) '~~Convicted~~' means ~~a finding or verdict of guilty or a plea of guilty regardless of~~
 476 ~~whether an appeal of the conviction has been sought. Such term also includes having~~
 477 ~~been arrested, charged, and sentenced for the commission of a child abuse crime for~~
 478 ~~which:~~
- 479 (A) ~~A plea of nolo contendere was entered to the charge; or~~
- 480 (B) ~~First offender treatment without adjudication of guilt pursuant to the charge was~~
 481 ~~granted. The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title~~
 482 ~~42, relating to probation of first offenders, or other first offender treatment shall be~~
 483 ~~conclusive evidence of arrest and sentencing for such crime.~~
- 484 (8) '~~Convicted child abuser~~' means ~~a person who is convicted.~~
- 485 (9)(6) 'Division' means the Division of Family and Children Services of the department.
- 486 (10)(7) 'Out-of-state abuse investigator' means a public child protective agency or law
 487 enforcement agency of any other state bound by confidentiality requirements as to
 488 information obtained under this article which are similar to those provided in this article.
- 489 (11)(8) 'Sexual abuse' ~~has~~ shall have the same meaning as in paragraph (10) of
 490 subsection (b) of Code Section 19-7-5.
- 491 (12)(9) 'Sexual exploitation' ~~has~~ shall have the same meaning as in paragraph (11) of
 492 subsection (b) of Code Section 19-7-5.
- 493 (13)(10) 'Substantiated case' means an investigation of a child abuse report by an abuse
 494 investigator which has been confirmed based upon a preponderance of the evidence that
 495 child abuse has occurred.

496 49-5-181.

497 (a) The division shall establish and maintain a central child abuse registry which shall be
498 known as the 'Child Protective Services Information System.' The child abuse registry
499 shall receive notice regarding:

500 ~~(1) Substantiated~~ substantiated cases occurring on and after July 1, 2016, reported to the
501 division pursuant to ~~subsection (a) of Code Section 49-5-182; and~~

502 ~~(2) Convicted child abusers on and after July 1, 2016, reported to the division pursuant~~
503 ~~to subsection (b) of Code Section 49-5-182.~~

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

506 (1) Immediately identify and locate substantiated cases ~~and convicted child abusers;~~ and

507 (2) Maintain and produce aggregate statistical data of substantiated cases ~~and cases of~~
508 ~~child abuse in which a person was convicted.~~

509 49-5-182.

510 ~~(a)~~ An abuse investigator who completes the investigation of a child abuse report made
511 pursuant to Code Section 19-7-5 or otherwise and determines that it is a substantiated case
512 if the alleged child abuser was at least 13 years of age at the time of the commission of the
513 act shall notify the division within 30 business days following such determination. Such
514 notice may be submitted electronically and shall include the following:

515 (1) Name, age, sex, race, social security number, if known, and birthdate of the child
516 alleged to have been abused;

517 (2) Name, age, sex, race, social security number, and birthdate of the parents, custodian,
518 or caretaker of the child alleged to have been abused, if known;

519 (3) Name, age, sex, race, social security number, and birthdate of the person who
520 committed the substantiated case; and

521 (4) A summary of the known details of the child abuse which at a minimum shall contain
522 the classification of the abuse as provided in paragraph (4) of subsection (b) of Code
523 Section 19-7-5 as either sexual abuse, physical abuse, child neglect, or a combination
524 thereof.

525 ~~(b) Upon receipt of a sentence for a convicted child abuser, the prosecuting attorney shall~~
526 ~~notify the division within 30 business days following such receipt. Such notice may be~~
527 ~~submitted electronically and shall include the following:~~

528 ~~(1) A certified copy of the sentence;~~

529 ~~(2) A complete history of the conviction, including a certified copy of the indictment,~~
530 ~~accusation, or both and such other information as the division may require;~~

531 ~~(3) Name, age, sex, race, social security number, and birthdate of the victim of child~~
 532 ~~abuse by the convicted child abuser, if known; and~~
 533 ~~(4) Name, age, sex, race, social security number, and birthdate of the parents, custodian,~~
 534 ~~or caretaker of the victim of child abuse by the convicted child abuser, if known.~~

535 49-5-183.

536 (a) Upon receipt of an investigator's report of a substantiated case pursuant to ~~subsection~~
 537 ~~(a)~~ of Code Section 49-5-182 naming an alleged child abuser, the division:

538 (1) Shall include in the child abuse registry the name of the alleged child abuser, the
 539 classification of the abuse as provided in paragraph (4) ~~of subsection (a)~~ of Code Section
 540 49-5-182, and a copy of the investigator's report; and

541 (2) Shall mail to such alleged child abuser in such report a notice regarding the
 542 substantiated case via certified mail, return receipt requested. It shall be a rebuttable
 543 presumption that any such notice has been received if the return receipt has been received
 544 by the division. The notice shall further inform such alleged child abuser of ~~such person's~~
 545 his or her right to a hearing to appeal such determination. The notice shall further inform
 546 such alleged child abuser of the procedures for obtaining the hearing and that an
 547 opportunity shall be afforded all parties to be represented by legal counsel and to respond
 548 and present evidence on all issues involved.

549 (b) Any alleged child abuser who has not attained the age of majority set forth by Code
 550 Section 39-1-1 at the time of the hearing requested pursuant to subsection (d) of this Code
 551 section shall be entitled to representation at the hearing either by the alleged child abuser's
 552 parent or other legal guardian or by an attorney employed by such parent or guardian. In
 553 the event the administrative law judge conducting the hearing determines that any such
 554 alleged minor child abuser will not be so represented at the hearing, or that the interests of
 555 any such alleged minor child abuser may conflict with the interests of the alleged minor
 556 child abuser's parent or other legal guardian, the administrative law judge shall order the
 557 division to apply to the superior court of the county in which the alleged act of child abuse
 558 was committed to have counsel appointed for the alleged minor child abuser. Payment for
 559 any such court appointed representation shall be made by such county.

560 (c) In order to exercise such right to a hearing, the alleged child abuser ~~must~~ shall file a
 561 written request for a hearing with the division within ten days after receipt of such notice.
 562 The written request shall contain the alleged child abuser's current residence address and,
 563 if ~~the person~~ he or she has a telephone, a telephone number at which ~~such person~~ he or she
 564 may be notified of the hearing.

565 (d) If the division receives a timely written request for a hearing under subsection (c) of
 566 this Code section, it shall transmit that request to the Office of State Administrative

567 Hearings within ten days after such receipt. Notwithstanding any other provision of law,
568 the Office of State Administrative Hearings shall conduct a hearing upon that request in
569 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and
570 the rules of the Office of State Administrative Hearings adopted pursuant thereto, except
571 as otherwise provided in this article. The hearing shall be for the purpose of an
572 administrative determination regarding whether, based on a preponderance of evidence,
573 there was child abuse committed by the alleged child abuser to justify the investigator's
574 determination of a substantiated case. The Office of State Administrative Hearings shall
575 give notice of the time and place of the hearing to the alleged child abuser by first-class
576 mail to the address specified in the written request for a hearing and to the division by
577 first-class mail at least ten days prior to the date of the hearing. It shall be a rebuttable
578 presumption that any such notice is received five days after deposit in the United States
579 mail with the correct address of the alleged child abuser and the division, respectively, and
580 proper postage affixed. Unless postponed by mutual consent of the parties and the
581 administrative law judge or for good cause shown, ~~that~~ such hearing shall be held within
582 30 business days following receipt by the Office of State Administrative Hearings of the
583 request for a hearing, and a decision shall be rendered within five business days following
584 such hearing. A motion for an expedited hearing may be filed in accordance with rules and
585 regulations promulgated by the Office of State Administrative Hearings. The hearing may
586 be continued as necessary to allow the appointment of counsel. A telephone hearing may
587 be conducted concerning this matter in accordance with standards prescribed in paragraph
588 (5) of Code Section 50-13-15. Upon the request of any party to the proceeding or the
589 assigned administrative law judge, venue may be transferred to any location within ~~the~~ this
590 state if all parties and the administrative law judge consent to such a change of venue.
591 Otherwise, the hearing shall be conducted in the county in which the alleged act of child
592 abuse was committed. The doctrines of collateral estoppel and res judicata as applied in
593 judicial proceedings are applicable to the administrative hearings held pursuant to this
594 article.

595 (e) At the conclusion of the hearing under subsection (d) of this Code section, upon a
596 finding that there is not a preponderance of evidence to conclude that the alleged child
597 abuser committed an act of child abuse, the administrative law judge shall order that the
598 alleged child abuser's name be removed from the child abuse registry. The general public
599 shall be excluded from hearings of the Office of State Administrative Hearings held
600 pursuant to this article, and the files and records relating thereto shall be confidential and
601 not subject to public inspection.

602 (f) Notwithstanding any other provision of law, the decision of the administrative law
603 judge under subsection (e) of this Code section shall constitute the final administrative

604 decision. Any party shall have the right of judicial review of such decision in accordance
 605 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that the
 606 petition for review shall be filed within ten days after such decision and may only be filed
 607 with and the decision appealed to the superior court of the county where the hearing took
 608 place or, if the hearing was conducted by telephone, the Superior Court of Fulton County.
 609 The procedures for such appeal shall be substantially the same as those for judicial review
 610 of contested cases under Code Section 50-13-19 except that the filing of a petition for
 611 judicial review stays the listing of the petitioner's name upon the child abuse registry, and
 612 the superior court shall conduct the review and render its decision thereon within 30 days
 613 following the filing of the petition. The review and records thereof shall be closed to the
 614 public and not subject to public inspection.

615 (g) The administrative law judge shall transmit to the division his or her decision regarding
 616 the alleged child abuser and the investigator's report regarding such individual within ten
 617 days following that decision unless a petition for judicial review of that decision is filed
 618 within the permitted time period. If a timely petition for judicial review is filed within the
 619 permitted time period, the superior court shall transmit to the division its decision regarding
 620 the alleged child abuser and the investigator's report regarding such individual within ten
 621 days following that decision.

622 (h) With regard to a minor child alleged to have committed abuse, the division shall
 623 remove such individual's name from the registry if:

624 (1) He or she has reached 18 years of age;

625 (2) More than one year has passed from the date of the act or omission that resulted in
 626 a substantiated case and there have been no subsequent acts or omissions resulting in a
 627 substantiated case; and

628 (3) He or she can prove by a preponderance of the evidence that he or she has been
 629 rehabilitated.

630 49-5-184.

631 ~~(a) Upon receipt of a notice from a prosecuting attorney pursuant to subsection (b) of Code~~
 632 ~~Section 49-5-182, the division shall include in the child abuse registry the name of the~~
 633 ~~convicted child abuser, the offense for which he or she was convicted, and whether the~~
 634 ~~offense is considered physical abuse, neglect or exploitation, sexual abuse, or sexual~~
 635 ~~exploitation.~~

636 ~~(b)~~(a) An individual Any person whose name appears in the child abuse registry as a
 637 ~~convicted child abuser~~ having committed a substantiated case shall be entitled to a hearing
 638 for an administrative determination of whether or not expungement of such person's
 639 individual's name should be ordered. In order to exercise such right, the ~~person must~~

640 individual shall file a written request for a hearing with the division. The provisions of this
 641 subsection shall not apply to ~~persons~~ individuals who have waived ~~their~~ a hearing after
 642 receipt of notice.

643 ~~(e)~~(b) Upon receipt by the division of a written request for a hearing pursuant to
 644 subsection ~~(b)~~ (a) of this Code section, the division shall transmit such request to the Office
 645 of State Administrative Hearings within ten days of receipt. The Office of State
 646 Administrative Hearings shall conduct a hearing in accordance with Chapter 13 of Title 50,
 647 the 'Georgia Administrative Procedure Act,' except as otherwise provided in this Code
 648 section. A hearing shall be conducted within 60 days following receipt of the request by
 649 the Office of State Administrative Hearings. Upon a finding that there is no credible
 650 evidence that the ~~person~~ individual who requested the hearing ~~is a convicted child abuser~~
 651 is the individual who had a substantiated case, the Office of State Administrative Hearings
 652 shall order the division to expunge that name from the registry. The general public shall be
 653 excluded from such hearings and the files and records relating thereto shall be confidential
 654 and not subject to public inspection.

655 ~~(d)~~(c) Notwithstanding any other provision of law, the decision of the Office of State
 656 Administrative Hearings pursuant to subsection ~~(e)~~ (b) of this Code section shall constitute
 657 the final agency decision. Any party shall have the right of judicial review of that decision
 658 in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'
 659 except that the petition for review shall be filed within 30 days after such decision and may
 660 only be filed with and the decision appealed to the superior court of the county where the
 661 hearing took place or, if the hearing was conducted by telephone, the Superior Court of
 662 Fulton County. The procedures for such appeal shall be the same as those for judicial
 663 review of contested cases under Code Section 50-13-19. The review and records thereof
 664 shall be closed to the public and not subject to public inspection.

665 49-5-185.

666 (a) Except as otherwise authorized in subsection (c) of this Code section and subsection
 667 (b) of Code Section 49-5-186, the only persons or entities ~~who~~ that may access or be
 668 provided any information from the child abuse registry are:

669 (1) An abuse investigator who has investigated or is investigating a case of possible child
 670 abuse and who shall only be provided information relating to ~~that~~ such case for purposes
 671 of using ~~that~~ such information in such investigation;

672 (2) State or other government agencies of this state or any other state which license
 673 entities that have interactions with children or are responsible for providing care for
 674 children or licensed entities in this state which interact with children or are responsible

675 for providing care for children and which shall only be provided information for purposes
676 of licensing or employment of a specific individual;

677 (3) A licensing entity, which may disclose information from the child abuse registry in
678 a written notice to an applicant or licensed entity whose license is denied or revoked as
679 a result of information found in the registry, to the extent that such information is
680 required in such notice by a federal or state law, regulation, or policy; or in a proceeding
681 arising from an adverse action taken against a licensed entity or individual as a result of
682 information found in the registry; ~~and~~

683 (4) The Department of Early Care and Learning, which is authorized to disclose all or
684 a portion of the information from the child abuse registry used to determine that a records
685 check is unsatisfactory or to rescind a determination that a records check is satisfactory
686 to an individual who has submitted a records check application or whose satisfactory
687 records check determination has been rescinded in accordance with Article 2 of
688 Chapter 1A of Title 20; and

689 (5) An affiliate court appointed special advocate program, as such term is defined in
690 Code Section 15-11-2, which information shall be provided and used solely for the
691 purpose of screening and selecting employees and volunteers of such affiliate court
692 appointed special advocate program and screening and selecting individuals to serve as
693 a CASA, as such term is defined in Code Section 15-11-2.

694 (b) The division shall provide the Governor's office, the General Assembly, district
695 attorneys, and law enforcement agencies with a statistical analysis of substantiated cases
696 of child abuse ~~and convicted child abusers~~ entered into the child abuse registry at the end
697 of each calendar year. This analysis shall not include the names of any children, parents,
698 or persons associated with the child abuse. This analysis shall not be protected by any laws
699 prohibiting the dissemination of confidential information.

700 (c) ~~A person~~ An individual may make a written request to the division to find out whether
701 ~~such person's~~ his or her name is included in the child abuse registry. Upon presentation of
702 a passport, military identification card, driver's license, or identification card authorized
703 under Code Sections 40-5-100 through 40-5-104, the office receiving such request shall
704 disclose to such ~~person~~ individual whether his or her name is included in the child abuse
705 registry and, if so, the date upon which his or her name was listed in the registry ~~and the~~
706 ~~substantiated case or child abuse crime for which such person was convicted.~~

707 (d) The division shall provide persons and entities authorized in subsection (a) of this Code
708 section with access to or information from the child abuse registry sufficient to meet the
709 requirements prescribed by Congress as conditions to federal funding for programs
710 administered by such ~~entities or persons~~ or entities.

711 49-5-186.

712 (a) Information in the child abuse registry shall be confidential and shall not be subject to
713 Article 4 of Chapter 18 of Title 50, and access thereto is prohibited except as provided in
714 this article. Such information shall not be deemed to be a record of child abuse for
715 purposes of Article 2 of this chapter.

716 (b)(1) Information obtained from the child abuse registry shall not be made a part of any
717 record which is open to the public except as provided in paragraph (2) of this subsection;
718 provided, however, that a district attorney may use such information in any court
719 proceeding in the course of any criminal prosecution, if such information is otherwise
720 admissible.

721 (2) Notwithstanding any other provisions of law, information in the child abuse registry
722 applicable to a child who at the time of his or her death was in the custody of a state
723 department or agency or foster parent, which information relates to the child while in the
724 custody of such state department or agency or foster parent, shall not be confidential and
725 shall be subject to Article 4 of Chapter 18 of Title 50.

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

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

732 49-5-187.

733 The division and other authorized agencies, entities, and persons and the employees thereof
734 providing information from the child abuse registry as authorized by this article and any
735 person who uses such information shall have no civil liability or criminal responsibility
736 therefor."

737 **SECTION 9.**

738 (a) This Act shall become effective on July 1, 2016, except as otherwise provided in
739 subsection (b) of this section.

740 (b) Section 5 of this Act shall become effective on March 1, 2017.

741 **SECTION 10.**

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