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SOCIAL SERVICES

Programs and Protection for Children and Youth: Amend the Child Abuse Registry Provisions; Change Appellate Venue from Juvenile Court to Superior Court

CODE SECTIONS:	O.C.G.A. §§ 49-5-180, -183.1, -184 (amended)[1]
BILL NUMBER:	SB 575
ACT NUMBER:	969
GEORGIA LAWS:	1996 Ga. Laws 1143
SUMMARY:	The Act amends Code sections governing the Georgia Child Abuse Registry, changing the definitions section and changing the procedure for appealing placement on the register. The Act further amends the Code to provide for representation of minors by counsel.
EFFECTIVE DATE:	April 15, 1996[2]

History

In 1990, the Georgia Child Abuse Registry was created to aid law enforcement officials and the Department of Family and Children Services (DFACS) in investigating reported child abuse.[3] The registry was designed to create a permanent record of alleged abuse for child abusers who never acquired a criminal record, in the event they left the jurisdiction.[4] Without a registry, people often cited for noncriminal child abuse had no record if they changed counties.[5] Only law enforcement and DFACS officials have access to the registry, and then only in the course of an ongoing investigation.[6]

The Child Abuse Registry law originally provided for a hearing before the juvenile court to have a name expunged, but only after the name was placed on the Child Abuse Registry (renamed the Child

1. SB 575 affects four sections within chapter 5 of title 49. This *Peach Sheet*™ addresses changes to three sections; changes to the remaining section are discussed in a separate *Peach Sheet*. *See Legislative Review*, 13 GA. ST. U. L. REV. 307 (1996).

2. This portion of the Act became effective upon approval by the Governor.

3. 1990 Ga. Laws 1772, § 1, at 1774 (codified at O.C.G.A. § 49-5-181 (Supp. 1996)).

4. Telephone Interview with Susan Phillips, Children's Trust Fund (June 7, 1996) [hereinafter Phillips Interview]. Phillips participated in the negotiations that surrounded the writing of the child abuse registry portions of the Act. *Id.*

5. *Id.*

6. *Id.* The registry is never available to employers or private citizens, contrary to public perception. *Id.*

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Protective Services Information System, or CPSIS,[7] in 1995).[8] In 1995, in an effort to increase due process protections before placing an alleged child abuser's name on the CPSIS,[9] the Code was amended to move the hearings to the newly created Office of State Administrative Hearings[10] (OSAH) and have hearings take place before the person's name ever reached the registry.[11] The changes came at the request of members of the defense bar and others, including individual alleged abusers, who felt the expungement hearings lacked due process protections.[12]

The early operations of OSAH exposed some of the provisions in the 1995 law that needed clarification because of technical problems.[13] Further, under the 1995 law, the juvenile court remained as the appellate authority for decisions made by OSAH;[14] the juvenile court's appellate authority is constitutionally questionable.[15] Problems encountered by OSAH in conducting the hearings, as well as constitutional concerns raised by some people who were placed on the registry, demonstrated a need for greater clarity regarding both hearings prior to names being added to the registry and the procedure for appealing such placement.[16]

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7. 1995 Ga. Laws 937, § 2, at 940 (codified at O.C.G.A. § 49-5-181 (Supp. 1996)).

8. 1990 Ga. Laws 1772, § 1, at 1776 (formerly found at O.C.G.A. § 49-5-184 (Supp. 1995)).

9. Telephone Interview with Vicki L. Snow, Chief State Administrative Law Judge, Office of State Administrative Hearings (June 6, 1996) [hereinafter Snow Interview].

10. 1995 Ga. Laws 937, § 2, at 939 (formerly found at O.C.G.A. § 49-5-180(7.1) (Supp. 1995)). The Office came into existence in 1994 pursuant to 1994 Ga. Laws 1856, § 3, at 1858-60 (codified at O.C.G.A. § 50-13-40 (1994)).

11. 1995 Ga. Laws 937, § 2, at 941-43 (formerly found at O.C.G.A. § 49-5-183.1 (Supp. 1995)); Snow Interview, *supra* note 9.

12. Snow Interview, *supra* note 9.

13. *Id.*

14. 1995 Ga. Laws 937, § 2, at 941-43 (formerly found at O.C.G.A. § 49-5-183.1 (Supp. 1995)); Snow Interview, *supra* note 9.

15. Notes from Vicki L. Snow to author upon reviewing the first draft (June 21, 1996) [hereinafter Snow Notes].

16. *Id.; see, e.g., In the Interest of I.B.*, 219 Ga. App. 268, 464 S.E.2d 865 (1995). An accused abuser challenged the constitutionality of the CPSIS. The court dismissed the claim as moot because the abuser's name was expunged from the registry and his requested relief had been granted. *Id.* Recently, a Fulton County Superior Court judge has ruled the procedures for placing names on the CPSIS are unconstitutional because, under the statute, appeals of placement on the CPSIS can only proceed as far as the superior court. Trisha Renaud, *Abuse Registry Law Held Invalid*, FULTON COUNTY DAILY REP., May 28, 1996, at 1. The Act's amendments were not in question. Snow Interview, *supra* note 9. Although an appeal of the superior court's decision is expected, as of this writing a decision has not been made whether or not to appeal the ruling. *See* Renaud, *supra*.

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When SB 575 (originally providing only that child advocacy centers have access to child abuse records)[17] came to the House Judiciary Committee, the bill's sponsor, Senator Clay, did not object when the Office of State Administrative Hearings and child advocates saw his bill as an opportunity to clear up the problems in the 1995 Child Abuse Registry law.[18]

SB 575

Definitional Changes

The Act changes several definitions regarding the CPSIS found in Code section 49-5-180.[19] It adds a definition of "administrative law judge" (ALJ) to make it absolutely clear before whom hearings regarding placement on the CPSIS would take place and to bring the law into line with the Georgia Administrative Procedure Act.[20]

Under the definition of "child abuse," the Act makes several changes. First, the Act defines "neglect or exploitation."[21] Previously, neglect or exploitation was not defined anywhere in the Code; anything could be alleged to constitute neglect or exploitation.[22] The Act narrows the definition into something identifiable by courts, defense attorneys, and child advocates.[23] Second, the Act changes "sexual assault" to "sexual abuse" to make the definition consistent with the rest of the Georgia Child Abuse sections of the Code.[24] Similarly, again for consistency,[25] the Act removes "sexual exploitation" from the "child abuse" definition because the overall definitions section, as well as the "sexual abuse" subpart, already contained a definition.[26]

A definition of "hearing office" as the "Office of State Administrative Hearings" was deleted and the Act replaces "hearing office" with "Office of State Administrative Hearings" throughout the article.[27] OSAH requested this change to make sure that practitioners accustomed to

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17. SB 575, as introduced, 1996 Ga. Gen. Assem.

18. Telephone Interview with Sen. Charles Clay, Senate District No. 37 (May 9, 1996).

19. O.C.G.A. § 49-5-180 (Supp. 1996).

20. Snow Notes, *supra* note 15. The Georgia Administrative Procedure Act can be found at 1964 Ga. Laws 338 and 1965 Ga. Laws 283 (codified at O.C.G.A. §§ 50-13-1 to -44 (1994)).

21. O.C.G.A. § 49-5-180(5)(B) (Supp. 1996).

22. *Id.*

23. *Id.*

24. O.C.G.A. § 49-5-180(5)(C) (Supp. 1996); Phillips Interview, *supra* note 4.

25. Phillips Interview, *supra* note 4.

26. *Compare* 1995 Ga. Laws 937, § 2, at 938 (formerly found at O.C.G.A. § 49-5-180(5)(D) (Supp. 1995)) *with* O.C.G.A. § 49-5-180(5) (Supp. 1996).

27. *Compare* 1995 Ga. Laws 937, § 2, at 939 (formerly found at O.C.G.A. § 49-5-180(7.1) (Supp. 1995)) *with* O.C.G.A. §§ 49-5-180, -183.1, -184 (Supp. 1996).

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hearings in the juvenile court recognized the 1995 change to OSAH.[28] OSAH hoped to alleviate any potential confusion that might result from unfamiliarity with the newly created office.[29]

In the "sexual exploitation" definition, "conduct by a child's parent or caretaker" was changed to "conduct by a person."[30] The new language takes into account the fact that not everyone accused of child sexual exploitation is a parent or caretaker of that child.[31] For example, bus drivers, visiting relatives, or neighbors who might not have been liable under the old section, but who exploit children, will be covered by the more inclusive language and subject to registration in the CPSIS.[32]

Procedural Changes

DFACS Notice to Alleged Abusers and the Right to a Hearing

The Act amends Code section 49-5-183.1, concerning the procedure for placing an alleged abuser on the CPSIS. First, notice is issued from DFACS to the alleged abuser that the abuser's name is about to be entered on the CPSIS and offering the alleged abuser the opportunity to appeal; receipt of such notice becomes a rebuttable presumption five days after the notice is placed in the mail.[33] This change makes it clear that putting notification in the mail serves as notice to the alleged abuser.[34] The Act adds language explicitly insuring the ability to appeal and the right to counsel.[35] These changes repeat due process assurances found in the Administrative Procedures Act (APA),[36] and are an attempt to clarify the procedural changes accompanying the switch from juvenile court hearings to OSAH hearings.[37]

The Act provides for the representation of minors in CPSIS administrative hearings.[38] The Act entitles a minor to representation by a parent or guardian or by counsel.[39] If the minor has no representation, then the ALJ conducting the hearing will order DFACS to go to the county's superior court and request that the court appoint

28. Snow Interview, *supra* note 9.
29. *Id.*
30. *Compare* 1995 Ga. Laws 937, § 2, at 940 (formerly found at O.C.G.A. § 49-5-180(9) (Supp. 1995)) *with* O.C.G.A. § 49-5-180(9) (Supp. 1996).
31. Phillips Interview, *supra* note 4.
32. *Id.*
33. O.C.G.A. § 49-5-183.1(b) (Supp. 1996).
34. Snow Interview, *supra* note 9.
35. O.C.G.A. § 49-5-183.1(b) (Supp. 1996).
36. 1964 Ga. Laws 338 (codified at O.C.G.A. §§ 50-13-1 to -44 (1994)); 1965 Ga. Laws 283 (codified at O.C.G.A. §§ 50-13-1 to -44 (1994)).
37. Snow Notes, *supra* note 15.
38. O.C.G.A. § 49-5-183.1(c) (Supp. 1996).
39. *Id.*

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counsel for the minor.[40] This provision became necessary when hearings shifted from the juvenile court to OSAH because, unlike the juvenile court judges who have the authority to appoint a guardian ad litem for minors, ALJs have no such authority.[41] Thus, the Act corrects any lack of representation problem and gives ALJs the authority to direct DFACS to seek counsel for unrepresented minors.[42]

The section regarding an alleged child abuser's right to an OSAH hearing before being placed on the CPSIS is amended to distinguish further between a "notice of classification," or notice that one is about to be placed on the CPSIS, and notice that a hearing regarding the CPSIS is to take place before OSAH.[43]

Hearing and Appeals from ALJ Decisions

The Act describes the hearing process in greater detail, mirroring that set forth in the APA.[44] OSAH must give the alleged abuser at least a ten day notice of the hearing, with the same five-day rebuttable presumption of notice by first class mail; a decision from the ALJ is required within five business days of the hearing.[45] The Act simply fine-tunes the procedure pursuant to the many recommendations of those who participate in the hearings as well as other child advocates.[46] All told, a hearing must be conducted and a decision rendered within thirty-five days of the date that OSAH received the hearing request.[47] The Act allows for a motion for an expedited hearing and a change of venue.[48] This reflects a recognition that the time between a request for a hearing and OSAH's decision has been expanded from fifteen to thirty-five days, and allows for a faster decision if need can be shown.[49] For reasons of judicial economy, res judicata and collateral estoppel principles are expressly applicable to these hearings.[50]

Both DFACS and the alleged abuser can now appeal the decision of the ALJ, whereas previously only the alleged abuser was afforded that right.[51] The avenue of appeal changes from the juvenile court to the

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40. *Id.*
41. Phillips Interview, *supra* note 4; Snow Interview, *supra* note 9.
42. Phillips Interview, *supra* note 4; Snow Interview, *supra* note 9.
43. O.C.G.A. § 49-5-183.1(d) (Supp. 1996); Snow Notes, *supra* note 15.
44. Snow Interview, *supra* note 9.
45. O.C.G.A. § 49-5-183.1(e) (Supp. 1996).
46. Snow Interview, *supra* note 9; Snow Notes, *supra* note 15.
47. O.C.G.A. § 49-5-183.1(e) (Supp. 1996).
48. *Id.*
49. Snow Notes, *supra* note 15.
50. O.C.G.A. § 49-5-183.1(e) (Supp. 1996).
51. *Compare* 1995 Ga. Laws 937, § 2, at 942 (formerly found at O.C.G.A. § 49-5-183.1(e) (Supp. 1995)) *with* O.C.G.A. § 49-5-183.1(g) (Supp. 1996).

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superior court,[52] which conforms the Act to the APA and responds to questions regarding the juvenile court's appellate authority.[53] The Act expressly states that the hearing before OSAH exhausts administrative avenues regarding the child abuse registry,[54] again making it consistent with the APA.[55]

Expungement Hearings

The Act also amends Code section 49-5-184, regarding expungement of names from the child abuse registry. Prior to the 1995 Code revisions, names were placed on the child abuse registry without a hearing.[56] Under the Act, individuals placed on the registry prior to 1995 may still petition for expungement.[57] However, persons who have had a hearing before OSAH prior to their name entering the registry pursuant to Code section 49-5-183.1 are not eligible for an expungement hearing.[58] This change applies the doctrines of res judicata and collateral estoppel to preserve judicial resources.[59]

Finally, in the section regarding appeal from an adverse ruling on expungement from the CPSIS, the exhaustion of administrative remedies is noted, with the judicial appeal route changed from juvenile court to superior court.[60] Again, this change brings the Code into line with the APA.[61]

Other Changes

The Act amends Code section 49-5-183.1 so that people added to the CPSIS must now be at least thirteen years of age.[62] The original law placed no age limit on people who could be listed in the system.[63] DFACS occasionally receives allegations of young children who molest their family members or playmates.[64] While these reports fell within the mandate of the Code section, DFACS usually opposed adding these alleged abusers to the CPSIS, because adding extremely young

52. O.C.G.A. § 49-5-183.1(g) (Supp. 1996).
53. Snow Interview, *supra* note 9.
54. O.C.G.A. § 49-5-183.1(g) (Supp. 1996).
55. Phillips Interview, *supra* note 4.
56. Snow Interview, *supra* note 9.
57. O.C.G.A. § 49-5-184(c) (Supp. 1996).
58. *Id.*
59. Snow Interview, *supra* note 9.
60. O.C.G.A. § 49-5-184(e) (Supp. 1996).
61. Snow Notes, *supra* note 15.
62. O.C.G.A. § 49-5-183.1(a) (Supp. 1996).
63. Snow Interview, *supra* note 9.
64. Snow Notes, *supra* note 15.

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offenders does not serve the overall purpose of the registry.[65] The age of thirteen was chosen because it comports with the age of criminal responsibility in other sections of the Georgia Criminal Code.[66]

C. Shawn Jones

65. Phillips Interview, *supra* note 4.
66. *Id.*

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