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SOCIAL SERVICES Drug Abuse by Minors: Require Reporting to State Agency

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SOCIAL SERVICES

Drug Abuse By Minors: Require Reporting to State Agency

CODE SECTIONS:	O.C.G.A. §§ 19-7-6 (new), 49-5-40 (amended), 49-5-41.1 (new), 49-5-45 (new)
BILL NUMBER:	SB 121
ACT NUMBER:	694
SUMMARY:	The Act encourages the reporting of suspected habitual drug abuse by children to the child welfare agency of the state. This reporting is to be done by those who care for the children, including school teachers. The Act also provides for confidentiality of the records of the drug abuse.
EFFECTIVE DATE:	July 1, 1987

History

The 1987 General Assembly session was marked by an increased interest in combating drug abuse. Several proposals addressing this problem were included in the Governor's 1987 legislative package.[1] Much of this heightened interest in Georgia parallels that of the rest of the country.[2]

SB 121 § 1

A proposal to fight drug abuse that generated considerable controversy was the Governor's proposal to require teachers and other professionals who deal with children to report juveniles suspected of using drugs. In its original form, SB 121 was patterned after the child abuse reporting stat-

1. *See* Straus, *Harris Pushes Plan to Fight Drugs in Schools*, Atlanta J., Jan. 7, 1987 at 4A, col. 3. Also included in the Governor's legislative package were bills that would revoke minors' driver's licenses after they were convicted of drug or alcohol related crimes, a constitutional amendment allowing circuitwide grand juries to make it easier to prosecute local elected officials involved in drug related crimes, and a constitutional amendment that would give the General Assembly the power to enact mandatory prison sentences for drug violators. Straus and Hansen, *Harris Plan to Fight School Drugs Opposed*, Atlanta J., Jan. 8, 1987 at 4D, col. 1-2.

2. *See* Hansen, *Drug Legislation Misses the Mark, Critics Contend*, Atlanta J. & Const., Feb. 8, 1987 at 1C, col. 3. "Georgia's fervor to stamp out drugs now rivals the nation's. . . . Local sports heroes have been visiting area elementary schools and exhorting children to say no to drugs. And Georgia lawmakers are pondering a flurry of bills aimed at eradicating drug abuse among youths." *Id.* at col. 3-4.

ute.[3] This version imposed a criminal penalty for failing to make the report by using the same language as the child abuse law.[4] Major opposition to this form of the bill came from teacher groups, with the misdemeanor penalty causing particular concern.[5] Even with the words "knowingly and willfully" qualifying the failure to report in order for the penalty to apply, advocates for teacher groups worried about the potential sweep of this criminal penalty. Also of concern was the lack of definition of a "suspected drug abuse."[6]

In addition, the original version of the bill raised the possibility of a conflict for teachers, who would be put in a position of possibly having to bypass school administrative channels in order to comply with the law. The bill required that the report be made to the child welfare agency. If the teacher simply reported it to his or her superior, the possibility remained that this might be considered a violation of the law. Teacher advocacy groups wanted this changed so that a teacher could make a report to the proper school administrator, and then the reporting teacher's responsibility would end.[7] There was virtually no support for this original form of the bill when it was first discussed in the Senate Judiciary Committee.[8]

These concerns were addressed in the subsequent forms of the bill, and what emerged was a substantially changed version.[9] The language of the

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3. O.C.G.A. § 19-7-5 (1982). SB 121 borrowed the language of the child abuse reporting statute "having reasonable cause to believe that a child under . . . 18 has had physical injury or injuries inflicted upon him by a parent or caretaker . . . has been neglected or exploited . . . , or has been sexually assaulted" (O.C.G.A. § 19-7-5(b)), and modified this language to read: "having reasonable cause to believe that a child under 18 has unlawfully consumed or otherwise used any controlled substance or marijuana." SB 121 § 1, as introduced, 1987 Ga. Gen. Assem.

4. *See* O.C.G.A. § 19-7-5(e) (1982) ("Any person or official required by this Code section to report a suspected case of child abuse who knowingly and willfully fails to do so shall be guilty of a misdemeanor.").

5. Interview with Harry Wilson, Executive Director of the Georgia Federation of Teachers, in Atlanta (Mar. 12, 1987) [hereinafter Wilson Interview]. Interview with Michael Kramer, General Counsel, Georgia Association of Educators, in Atlanta (Mar. 12, 1987) [hereinafter Kramer Interview]. Even though the proposed legislation would have required other professionals in addition to teachers to report suspected drug abuse, the main opposition came from the teacher groups. *See* Straus and Hansen, *supra* note 1, quoting Rusty Kidd, lobbyist for the Medical Association of Georgia, who reported that doctor groups generally supported the legislation.

6. Wilson Interview, *supra* note 5; Kramer Interview, *supra* note 5. In 1976, the child abuse reporting statute was the subject of an opinion of the Attorney General, who said in order to meet the legislative intent, the words "cause to believe" should be construed to mean the same thing as "cause to suspect." This would result in a liberal construction of the statute and meet the legislative goals. 1976 Op. Att'y. Gen. No. 76-131.

7. Kramer Interview, *supra* note 5.

8. Wilson Interview, *supra* note 5.

9. The Senate Special Judiciary Committee offered a committee substitute, which was adopted by the full Senate. The House Judiciary Committee subsequently offered

final version of the bill varies significantly from the child abuse reporting statute. The Senate Judiciary Committee added a section to define the purpose of the statute. It states that:

> The purpose of this Code section is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the unlawful use and abuse of controlled substances . . . . It is intended that the reporting of the unlawful use of any controlled substance or marijuana will cause the protective services of the state to be brought to bear on this situation in an effort to protect and enhance the welfare of children.[10]

This section further provides that the Act shall be "liberally construed" to effect this purpose.[11]

The list of persons required to report was eliminated and in its place are the words "any person exercising *in loco parentis* control."[12] The language requiring reporting was changed to "encouraged to report," and the words "suspected drug abuse" were changed to suspicion of "habitually using in an unlawful manner."[13] If this information is obtained during a counseling or treatment program, the professional is exempt from reporting.[14] In addition, the concerns of the teachers were addressed by a section which directs school personnel to make their report to the "person in charge of the facility or his designated delegate."[15] That supervisory person is then to make the report as directed by this Code section.[16] The misdemeanor penalty was eliminated and language added that prohibits the enactment of any disciplinary rule or penalty against any government employee who fails to make a report.[17] This section contains the same language granting immunity from personal liability[18] that is found in the child abuse reporting statute.[19]

The Senate Special Judiciary Committee added a section requiring the agency receiving the report to forward it to the juvenile court.[20] The House Judiciary Committee added a section prohibiting any agency or political subdivision from enacting or enforcing any penalty against an

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its own committee substitute, which the full House passed and to which the Senate agreed.

10. O.C.G.A. § 19-7-6(a) (Supp. 1987).
11. *Id.*
12. O.C.G.A. § 19-7-6(b) (Supp. 1987).
13. *Id.*
14. O.C.G.A. § 19-7-6(g) (Supp. 1987).
15. O.C.G.A. § 19-7-6(c) (Supp. 1987).
16. *Id.*
17. O.C.G.A. § 19-7-6(e) (Supp. 1987).
18. O.C.G.A. § 19-7-6(f) (Supp. 1987).
19. O.C.G.A. § 19-7-5(d) (1982).
20. O.C.G.A. § 19-7-6(h) (Supp. 1987).

employee for failing to make a report.[21]

SB 121 §§ 2, 3, 4

These sections of the Act deal with the record-keeping requirements in relation to the reports of drug abuse made to the child welfare agency. The original version of the bill simply inserted language about drug abuse into the child abuse report record-keeping statute.[22] The changes made in these sections of the legislation reflect some of the same concerns as were expressed in regard to the reporting requirements. The House Judiciary Committee completely rewrote this section and made it a separate section of the Code,[23] making requirements regarding access to the records much stricter than those imposed for child abuse records.[24] The child abuse record-keeping statute provides that the records shall be confidential, but then subsequently allows for access by certain named persons and agencies, including child protective agencies,[25] grand juries,[26] physicians,[27] and police departments.[28] This section has been the subject of judicial scrutiny in the context of a proceeding to terminate parental rights.[29] The court concluded that, in spite of the confidentiality requirement, portions of the record had to be made available to the parent seeking them through pretrial discovery.[30]

The safeguards to confidentiality incorporated into the records of drug abuse are extensive. The new Code sections provide that these records cannot be opened without a court order,[31] will only be kept by the Department of Human Resources for twenty-four months,[32] and may be ordered permanently sealed by a court upon application by the person who is the subject of the report.[33] One section provides for a misdemeanor penalty for anyone who breaks the confidentiality guaranteed by this Code section,[34] as does the child abuse record-keeping section.[35]

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21. O.C.G.A. § 19-7-6(e) (Supp. 1987).
22. SB 121, as introduced, 1987 Ga. Gen. Assem.
23. SB 121 (HCS), 1987 Ga. Gen. Assem.; O.C.G.A. § 49-5-41.1 (Supp. 1987).
24. O.C.G.A. §§ 49-5-40 to -41 (Supp. 1987).
25. O.C.G.A. § 49-5-41(a)(1) (1986).
26. O.C.G.A. § 49-5-41(a)(3) (1986).
27. O.C.G.A. § 49-5-41(b)(1) (1986).
28. O.C.G.A. § 49-5-41(b)(2) (1986).
29. Ray v. Department of Human Resources, 155 Ga. App. 81, 220 S.E.2d 303 (1980).
30. *Id.*
31. O.C.G.A. § 49-5-41.1(a) (Supp. 1987).
32. O.C.G.A. § 49-5-41.1(c) (Supp. 1987).
33. O.C.G.A. § 49-5-41.1(d) (Supp. 1987).
34. O.C.G.A. § 49-5-45 (Supp. 1987).
35. O.C.G.A. § 49-5-44 (1986). *See also* O.C.G.A. § 15-11-61 (1982) regarding the juvenile court's power to seal records upon application of the person adjudicated delin-

quent two years after the final discharge of such person. The question to be considered in the sealing of the records of drug abuse is whether the child who is reported is to be notified, so that the child may seek a sealing of the records. Also, the child abuse legislation contains no standards to be used by the judge in ordering the sealing.