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SOCIAL SERVICES

Programs and Protection for Children and Youth: Control Who May Have Access to Records Concerning Child Abuse Reports

CODE SECTIONS: O.C.G.A. §§ 49-5-41, -183 (amended); 1990 Ga. Laws 1778, § 5 (repealed)

BILL NUMBER: HB 289

ACT NUMBER: 498

SUMMARY: The Act changes who may have access to child abuse records and what information such persons may be given. The Act also repeals the clause indicating that records shall not be released if such release would cause loss of federal funds.

EFFECTIVE DATE: April 16, 1991

History

In the 1990 legislative session, a comprehensive package of child abuse legislation was passed in response to a series of articles in the *Atlanta Journal-Constitution* that highlighted the deficiencies of the Georgia child protection system.¹ An integral part of this legislation reform was an amendment to Code section 49-5-41 that greatly increased access to child abuse records.² While the majority of the reform legislation was adhered to, the changes in the confidentiality laws were not.³ These changes that eased the confidentiality laws were resisted by the Department of Human Resources (DHR) after the federal government notified the agency that the state legislation was not in compliance with federal regulations, and that following these new laws could result in loss of federal funding.⁴ The DHR stated it could not comply with the changes made as part of the legislative reform, relying upon the "savings clause" which had been passed as part of the confidentiality legislation in 1990. This clause indicated to the federal government that "[t]he Act shall not authorize or require the inspection of any records

1. Legislative Review, 7 GA. ST. U. L. REV. 268 (1990).

2. 1990 Ga. Laws 1778 (formerly found at O.C.G.A. § 49-5-41 (Supp. 1990)).

3. Jane Hansen, *Secrecy Survives Welfare Reforms*, ATLANTA J. & CONST., Dec. 16, 1990, at H1.

4. *Id.* See also Telephone Interview with Valerie Hepburn, Assistant Commissioner for Public Affairs, Department of Human Resources (Apr. 8, 1991) [hereinafter Hepburn Interview].

or the release of any information if that inspection or release would result in the loss of any federal funds to the state.”⁵ Estimates of the amount of federal funding that could potentially be lost if the DHR followed Code section 49-5-41 varied from \$350,000 to \$20 million.⁶

The press argued that the confidentiality law should be followed as passed because Georgia has previously been out of compliance with other federal regulations in this area without the federal government threatening to withdraw funds.⁷ Also, only once in its fifteen year history had the Children, Youth and Families Administration previously cut off funds to a state for a lack of compliance with the confidentiality regulations.⁸ The DHR felt that the risk of losing those federal funds could not be taken, especially because the Department was on notice from the federal government that the state law was not in compliance.⁹

The DHR's decision not to follow Code section 49-5-41 caused concern in the General Assembly that an administrative agency could decide it would not comply with a state law due to a lack of conformity with a federal regulation.¹⁰ This kind of decision about the enforceability of state law was felt to be the domain of the courts.¹¹

To clear up the issues with the confidentiality aspects of the child abuse reform package, a small group, consisting primarily of representatives from the House, the DHR, and the Press Association, was convened before the 1991 legislative session with the intention of working out a compromise bill.¹² This compromise bill, HB 289, was passed relatively easily with few changes.¹³

HB 289

HB 289 was drafted as “clean up” legislation, and the substance of the prior law was “probably not greatly changed.”¹⁴ Code section 49-5-41(a)(7) was amended to restrict release of child abuse records to the State Personnel Board in disciplinary actions to issues that involve “the conduct of such personnel in child-related employment activities.”¹⁵

5. Hepburn Interview, *supra* note 4. The “savings clause” is found at 1990 Ga. Laws 1778, § 5.

6. Hansen, *supra* note 3, at H6.

7. *Id.*

8. *Id.*

9. Hepburn Interview, *supra* note 4.

10. *Id.*

11. *Id.*

12. Telephone Interview with Rep. Mary Margaret Oliver, House District No. 53 (Apr. 5, 1991) [hereinafter Oliver Interview]. This group consisted of Rep. Oliver, Valerie Hepburn of DHR, and Peter Canfield of the Press Association. *Id.*

13. *Id.*

14. Hepburn Interview, *supra* note 4.

15. O.C.G.A. § 49-5-41(a)(7) (Supp. 1991). This change was made at the request of the DHR. Oliver Interview, *supra* note 12.

The wording of Code section 49-5-41(b)(2)(C), which involves the release of information to individuals conducting research in the area of child abuse, was amended with the intention of tracking the federal legislation to ensure the state law was in compliance.¹⁶ Other amendments to the Code section explicitly provide that access or release of certain child abuse records must be made in such a way as to protect the identity of the person reporting the abuse and anyone else “whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected.”¹⁷

The final change, and perhaps the most important, is the repeal of the “savings clause.”¹⁸ This repeal removes from the administrative agency the ground for its claim of discretion in deciding that it will not follow the state law if it is not in compliance with the federal regulations.

Carol Ann Hendry

16. Oliver Interview, *supra* note 12. See also Hepburn Interview, *supra* note 4.

17. O.C.G.A. § 49-5-41(c)(7)–(8) (Supp. 1991). This change was requested by the DHR. Oliver Interview, *supra* note 12.

18. 1990 Ga. Laws 1778 was specifically repealed.