

GEORGIA'S NEW CHILD ABUSE REGISTRY

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QUARTERLY CLE

STATE BAR OF GEORGIA
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TODAY'S TOPICS

- Purpose of the child abuse registry?
- The old registry
- New registry timelines
- Minors on the registry
- Right to counsel
- Administrative hearings
- Judicial review of administrative decisions
- Removal of names from the registry
- Access to registry information
- Constitutional issues
- Red flags

WHAT'S THE PURPOSE?

- "We need to make sure we are doing everything we can to keep children safe, especially while they are in the care of others. The creation of the registry will make sure child caring agencies have access to the information they need to make the best hiring and licensing decisions." – Bobby Cagle, Director
- To enable abuse investigators to immediately identify and locate substantiated cases
- To maintain and produce aggregate statistical data of substantiated cases

O.C.G.A. §49-5-181(b)

THE OLD CHILD ABUSE REGISTRY

- CPSIS – Child Protective Services Information System
- Classifications:
 - Unfounded – no credible evidence that the alleged child abuse occurred
 - Confirmed – at least equal or greater credible evidence that the child abuse occurred
 - Unconfirmed – some credible evidence that the abuse occurred, but not sufficient evidence to classify as confirmed

REMOVAL FROM THE OLD REGISTRY

- DFCS notified alleged abuser of report classification
- Right to hearing before Administrative Law Judge
- ALJ determined whether evidence met required standard for the classification
- Alleged abuser not allowed to compel testimony from a child under the age of 14
- ALJ decision appealable to Superior Court
- No appeal allowed from Superior Court's ruling

STATE V. JACKSON

- Bart Jackson received notice he was reported as a confirmed child abuser
- Requested ALJ hearing
- Hearing postponed until conclusion of criminal case re 5 counts of child molestation
- Jackson tried and acquitted of all 5 counts
- DFCS wanted to keep Jackson on CPSIS as a confirmed abuser

State of Georgia et al. v. Bart Jackson, 269 Ga. 308 (March 20, 1998)

STATE V. JACKSON, CONTINUED

- Jackson filed a challenge to the constitutionality of O.C.G.A. § 49-5-183.1
- Jackson argument:
 - Sixth Amendment right to compel witnesses on his behalf
 - Sixth Amendment right to confront witnesses against him
- State's argument:
 - Only reputational harm
 - No deprivation of liberty
 - Not entitled to Sixth Amendment protections
- Superior Court agreed with Jackson
- State appealed

STATE V. JACKSON, CONTINUED

- GA Supreme Court opinion:
 - Jackson entitled to due process protections
 - State infringement on due process must be narrowly tailored to serve a compelling state interest
 - State interest = welfare of children
 - Prohibiting children <14 from being compelled to testify NOT narrowly tailored to protect that State interest
 - O.C.G.A. § 49-5-183.1 unconstitutional on its face
 - No other arguments addressed
 - O.C.G.A. § 49-5-180 – 187 later repealed

NEW CHILD ABUSE REGISTRY

- Effective July 1, 2016
- Investigator substantiates a case of child abuse or neglect
- ≤30 days – notifies DFCS of the determination
- Alleged child abuser whose case is substantiated is *immediately* entered in CPSIS
- DFCS notifies alleged abuser by certified mail
 - Inclusion on registry
 - Right to appeal determination

O.C.G.A. §§49-5-181, 49-5-183

TIMELINES

- ≤10 days - written request for hearing to DFCS
- ≤10 days - DFCS transmits request to Office of State Administrative Hearings (OSAH)
- ≥10 days of hearing - OSAH gives notice of time and place of hearing by first class mail
- ≤30 days of receipt of request for hearing – OSAH holds hearing
- Hearing can be postponed by mutual consent, for good cause shown, or for appointment of counsel (if alleged abuser <18)

O.C.G.A. §49-5-183

MINORS ON THE REGISTRY

- Substantiated cases must be reported to the registry if the alleged child abuser is **at least 13 years old**
- Entitled to notice via certified mail, return receipt requested
- Notice of: placement on registry & right to appeal
- Rebuttable presumption of notice if the return receipt has been received by DFCS

O.C.G.A. §49-5-183

MINOR'S RIGHT TO COUNSEL

- If accused minor has not maintained age of majority by time of hearing
- Minor entitled to representation by either
 - Parent
 - Legal guardian
 - Attorney employed by parent or guardian
- ALJ may order DFCS to apply to superior court of county where alleged abuse was committed to have counsel appointed at county's expense
- Hearing may be continued for appointment of counsel

O.C.G.A. §49-5-183(b)

ADULT'S RIGHT TO COUNSEL

- Notice to alleged abuser references right to counsel
- “The notice shall further inform such alleged child abuser of the procedures for obtaining the hearing and that an opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved.”
- No right to court-appointed counsel for indigent adult

O.C.G.A. §49-5-183(a)(2)

ETHICS & PROFESSIONALISM

- **Minors**
 - May a non-attorney parent or guardian represent a minor in an administrative law hearing?
 - Is this unlicensed practice of law?
- **Adults**
 - Pre-hearing issues are dealt with via email
 - In OSAH context, SAAG may have to communicate directly with parent

OSAH HEARING

- Conducted in accordance with Georgia Administrative Procedure Act
- Finder of fact: administrative law judge (ALJ)
- Determination: whether child abuse was committed by the alleged child abuser to justify the investigator’s substantiation
- Doctrines of res judicata and collateral estoppel apply

O.C.G.A. §49-5-183(d)

ALJ DECISION

- Within 5 business days
- If there is not a preponderance of evidence that the alleged abuser committed the act of child abuse
 - ALJ orders name removed from Child Abuse Registry
- ALJ decision = final administrative decision
- Georgia Administrative Procedure Act: either party has right to judicial review

O.C.G.A. §49-5-183(d)-(f)

JUDICIAL REVIEW OF ALJ DECISION

- Petition for review must be filed within 10 days
- Petition filed in Superior Court of County where OSAH hearing was held
- If hearing was by telephone, file in Fulton County Superior Court
- Superior Court conducts review
- Superior Court may, upon request, hear oral argument and receive written briefs
- Renders decision within 30 days of filing of petition?

O.C.G.A. §§49-5-183(f), 50-13-19(g)

JUDICIAL REVIEW OF ALJ DECISION

- O.C.G.A. § 50-13-19:
 - No substitute of judgment as to the weight of the evidence
 - Court may affirm, remand, reverse, or modify decision of agency
- Basis for reversal or modification: substantial rights of appellant prejudiced by
 - Administrative findings, inferences, conclusions that are...
 - In violation of constitutional or statutory provisions
 - In excess of statutory authority of the agency
 - Made upon unlawful procedure
 - Affected by other error of law
 - Clearly erroneous, arbitrary, or capricious
 - Abuse of discretion or unwarranted exercise of discretion
- No statutory restriction on right to appeal Superior Court's decision

REMOVAL OF NAME FROM REGISTRY

- **Minors**
 - At age 18
 - After 1 year if no subsequent substantiated cases
 - Upon showing of rehabilitation (by preponderance)
- **Adults**
 - Entitled to a hearing on expungement upon written request IF hearing was not waived after receipt of notice
 - Basis for removal: mistaken identity
 - No credible evidence that individual who requested hearing is the individual who had a substantiated case of child abuse
 - Right to judicial review

§§ 49-5-183(h), 49-5-184

ACCESS TO REGISTRY INFORMATION

- General public excluded from OSAH child abuse registry hearings
- Files and records relating to hearings confidential and not subject to public inspection
- Misdemeanor to provide information to unauthorized person
- Misdemeanor to obtain/attempt registry information under false pretense

ACCESS TO REGISTRY INFORMATION

- Child abuse investigator for purpose of investigating another case of alleged child abuse
- State or other government agencies which license entities interacting/caring for children
- Licensed GA entities that interact/care for children – for purpose of licensing/employment of a specific individual

O.C.G.A. §49-5-185

ACCESS TO REGISTRY INFORMATION

- Licensing entity who must provide written notice to an applicant/licensed entity re denial/revocation of license resulting from registry information
- Department of Early Care and Learning - to compare to its individual records checks
- CASA – for screening of employees and volunteers
- Governor’s office, General Assembly, district attorneys, and law enforcement – statistical info only

ACCESS FOR ADOPTION PURPOSES

PRIOR TO NOVEMBER 21, 2106

- No access for licensed child-placing agencies
- Is my name on the registry?
 - O.C.G.A. § 49-5-185(c)
 - Government-issued picture ID as authorized under O.C.G.A. § 40-5-100 through 104
 - DFCS shall disclose
 - Whether individual’s name is included in registry
 - Date name was added to registry

INDIVIDUAL SCREENING REQUESTS

CHILD PROTECTIVE SERVICES INFORMATION SYSTEM (CHILD ABUSE REGISTRY)

Home | **Screening Request** | FAQ | Forms | Contact Us

Welcome to Child Protective Services Information System (Child Abuse Registry)

Georgia's Division of Family and Children Services works to ensure the safety and protection of all Georgia's children. Senate Bill 130, section 11 was codified into Georgia code 49-5-185 which requires the Division of Family and Children Services to establish and maintain a registry of all substantiated cases of abuse and neglect into a centralized Child Protective Services Information System (Child Abuse Registry). The Division of Family and Children Services will enter the names of all multibutors with a substantiated case of child abuse and/or neglect on or after July 1, 2016 into the Child Protective Services Information System (Child Abuse Registry).

Benefits:

- Promote a more efficient method of sharing child abuse information with other states as required by law.
- Central repository where substantiated investigated child abuse and neglected reports are stored and maintained.
- Comply with State of Georgia laws and regulations.
- Comply with the Division of Family and Children Services (DFCS) child welfare policy and practices.

GA 495895 | 8/5 | Account

Copyright © 2016. All Rights Reserved. Department of Human Services - Child Protective Services Information System (Child Abuse Registry). This site can be best viewed in IE 11.0 or above with 1366 x 768 screen resolution.

<https://gacar.dhs.ga.gov/General/Home>

INDIVIDUAL SCREENING REQUESTS

**CHILD PROTECTIVE SERVICES INFORMATION SYSTEM
(CHILD ABUSE REGISTRY)**

Home Agency Request Self Check Contact Us

Agency Request

Child Protective Services Information System/Child Abuse Registry requests are governed by state law O.C.G.A. Section 46-5-100 et seq. Only requests in accordance with this law will be submitted. By signing below, you are affirming that your request conforms to state law and that the information provided is true and accurate. Providing false and misleading information may subject you to criminal penalties under state law.

Self Check
An individual who wishes to check the registry for use whether or not his/her name is listed. (Please provide State's Name, State ID, Passport, or Military ID)

Self Screening Request

DICV Investigator
A DICV Investigator who has investigated or is investigating a case of possible child abuse who shall only be provided information relating to that case for purposes of solving that information to such investigation.

Self Screening Request

State or government agency of this state or any other state.
A state or government agency of this state or any other state, which has or within 180 days has had contact with the child or any individual responsible for providing care for children, which shall only be provided information for purposes of licensing or enrollment of a specific individual.

Self Screening Request

Licensed entities in this state.
Licensed entities in this state, which have had with children or are responsible for providing care for children, which shall only be provided information for purposes of licensing or enrollment of a specific individual.

Self Screening Request

SCREENING REQUEST FORM

**CHILD PROTECTIVE SERVICES INFORMATION SYSTEM
(CHILD ABUSE REGISTRY) SCREENING REQUEST FORM**

REGISTRATION DATE

REGISTRATION TYPE

REGISTRATION TYPE	REGISTRATION DATE
REGISTRATION TYPE	REGISTRATION DATE
REGISTRATION TYPE	REGISTRATION DATE

REGISTRATION BY PERSON TO BE SCREENED OR REQUEST

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FORM MUST BE SUBMITTED IN PERSON

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Self Screening Request

ACCESS FOR ADOPTION PURPOSES

AS OF NOVEMBER 21, 2106

- Child-placing agencies must assess placements regarding room, board, and watchful oversight to be provided by the prospective foster or adoptive parent
- Licensing rules and regulations governing child-placing agencies provide that agencies shall comply with requirements of state laws affecting children and/or the operation of the child-placing agency
- Child-placing agencies may submit screening requests via the on-line portal

HISTORICAL INFORMATION MAINTAINED

- CPSIS limited to abuse substantiated on or after July 1, 2016
- SHINES - Info on cases occurring before July 1, 2016
- SHINES access limited to
 - Government entities responsible for protecting children from abuse/neglect
 - Court for determination of an issue before it
 - Grand Jury, district attorney, solicitor general
 - Any adult who makes report of abuse/neglect pursuant to O.C.G.A. § 19-7-5 (limited access)

O.C.G.A. §49-5-41

CONSTITUTIONAL ISSUES

- Due process – two-part analysis
 - Is there a deprivation of a liberty or property interest?
 - ✦ Reputational harm?
 - ✦ Bar from prospect of employment?
 - ✦ Bar from actual employment?
 - Are there sufficient procedural protections?
 - ✦ What private interest if affected by the official action?
 - ✦ Risk of erroneous deprivation of that interest?
 - ✦ Government interest and burden of additional procedural protections?

Research credit to John Farmer – law student, University of Georgia

CONSTITUTIONAL ISSUES

- **Other considerations**
 - Placement on registry precedes notice & opportunity to be heard
 - Time from placement on registry to ALJ decision ≥ 50 days
 - Preponderance of evidence standard for placement
 - Standard applied by investigator without judicial oversight
 - Employers are not required to check registry

CONSTITUTIONAL ISSUES

- **Right to counsel**
 - Representation by parent or guardian for minors
 - No guarantee of counsel for indigent adults
 - Is the OSAH hearing sufficiently analogous to dependency hearing in Juvenile Court?
 - Douglas v. California, 372 U.S. 353 (1963)

RED FLAGS

- **When does a “substantiated case” occur?**
- **O.C.G.A. 49-5-183(a)(1) vs. (f)**
 - Automatic inclusion of alleged abuser’s name in child abuse registry
 - Filing of petition for review in Superior Court stays listing of petitioner’s name in child abuse registry

RED FLAGS

- Eligible perpetrators
 - For registry purposes, "child abuse" has the same meaning as in 19-7-5(b)(4)
 - "Child abuse" means:
 - ✦ Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means (excluding physical discipline without injury)
 - ✦ Neglect or exploitation of a child by a parent or caretaker
 - ✦ Sexual abuse of a child
 - ✦ Sexual exploitation of a child
 - What about an alleged abuser who is
 - ✦ Not a parent
 - ✦ Not a caretaker

§49-5-180(5)

RED FLAGS

- Statutory definitions of abuse/neglect vs. Georgia Maltreatment Codes
 - Emotional abuse (E1) is not included in §19-7-5(b)(4)
 - Family/domestic/intimate partner violence (E3)
 - ✦ Perpetrator can be a former spouse, foster child, person formerly living in same household
 - ✦ Violence in the presence of a child (able to see or hear)
 - ✦ No injury to child required
 - ✦ Does not meet §19-7-5(b)(4) definition of abuse/neglect

RED FLAGS

- False positives
 - Cases dismissed at Preliminary Protective Hearing
 - Cases dismissed at Adjudication
- Analogy between police and CPS investigators
- Illinois solution
 - Dupuy v. Samuels, 141 F.Supp. 2d 1090 (2005)
 - Child protection agency must consider all evidence, both inculpatory and exculpatory, in an investigation into a suspected incident of child abuse
- GA DFCS Policy 5.1
 - Review and analyze reports, assessments, and physical evidence gathered that supports or refutes the allegations of abuse or neglect

<http://odis.dhs.ga.gov/ChooseCategory.aspx?cid=1029>

RED FLAGS

- **Misapplication of collateral estoppel or res judicata**
 - Identity of parties
 - Identity of cause of action
 - Prior adjudication by court of competent jurisdiction
 - Full & fair opportunity to litigate issues in first action
- **All elements of Maltreatment Code not met**
 - Abandonment (N2)
 - Fractures, dislocations, sprains (P1)
 - Bruises, welts, abrasions (P7)

QUESTIONS?

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