

Mandatory Reporting of Child Abuse

A Guide for Public Libraries in Georgia

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Effective July 1, 2012, Georgia's law on mandated reporting of suspected child abuse expanded the definition of "child service organization personnel" to include "persons employed by or volunteering at a business or an organization, whether public, private, for profit, not for profit, or voluntary, that provides care, treatment, education, training, supervision, coaching, counseling, recreational programs, or shelter to children." O.C.G.A. § 19-7-5 (full text of the statute included below). Because Georgia's public libraries provide both education and recreational programs to children, anyone who is employed by, or volunteers at, a public library that serves children is now a mandatory reporter. The statute contains no age limitation for reporters; therefore, all library employees and volunteers, even minors, are subject to the mandatory reporting law.

A mandatory reporter who has reasonable cause to believe a child has been abused must report the situation to the proper authority immediately (no later than 24 hours of the time the abuse is suspected). Any person required under the statute to report abuse who knowingly and willfully fails to do so is guilty of a misdemeanor. It is important to note that this is a criminal statute, and courts have determined that it does not create a private cause of action. In other words, liability for a civil action against the library or an individual working there is not affected by the statute.

The statute identifies four types of abuse: (1) physical injury/death that is non-accidental, (2) neglect or exploitation, (3) sexual abuse, and (4) sexual exploitation. The terms "sexual abuse" and "sexual exploitation" are defined by the statute.

Library employees and volunteers should be notified of their responsibilities under the law and given information on what signs to look for in order to spot abuse. Georgia's Department of Human Services provides detailed information on these issues as well a one-page

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summary that will be helpful library employees. To learn more, go to <http://dfcs.dhr.georgia.gov> and access the “Services” drop-down menu to select “Child Abuse & Neglect.” Another resource for educating personnel on how to spot abuse is a free on-line training course available from the Governor’s Office for Children and Family (<http://children.georgia.gov/press-releases/2012-07-27/governor-signs-amendment-expanding-mandated-reporter-laws>).

It is crucial that library personnel understand how to make a report of abuse in addition to knowing how to identify abuse. As applied to public libraries, the statute contains an ambiguity in the reporting procedure. The general reporting procedure requires the person who has a reasonable belief that abuse is or was occurring to make an immediate oral report to the appropriate child welfare agency or, in the absence of such agency, the appropriate police authority or district attorney. In most locations the child welfare agency that provides protective services is the county Division of Family and Children’s Services (DFACS). To find the DFACS nearest your library go to <http://dfcs.dhs.georgia.gov/county-offices>.

Subsection 2(c) slightly alters the procedure as to employees or volunteers at “a hospital, school, social agency, or similar facility” to allow compliance through notification of the person in charge of the facility. It then becomes the responsibility of the person in charge of the facility to make the immediate oral report to the proper authority.

The applicability of subsection 2(c) to public libraries is unclear. Given the state’s policy for the establishment of public library service as “part of the provisions for public education” (O.C.G.A. § 20-5-1), it is reasonable to conclude (but not certain) that a public library is a “similar facility” to a school. However, this is a decision that each library system, through its board and library director, must reach individually. Making this decision is necessary in order to

adopt and implement a policy on mandatory reporting and educating personnel on what is required.

Even if a library determines it may utilize the subsection 2(c) notification process rather than require every individual employee or volunteer to report directly to the child welfare agency, there is at least a small number of employees that require training in how to make the proper report. In addition to educating personnel on how to identify abuse suggested above, for those required to report directly to DFACS or law enforcement, training should include:

- the name and contact number for the appropriate agency,
- the nature of the information to be provided verbally,
- the contents of the follow-up written report (see sample form below).

Essentially, the reporter should provide a description of what was observed or the circumstances that led to the suspicion of abuse. The reporter has no obligation to investigate, and, in fact, investigation should be left to child protection professionals. Library personnel will have complied with the statute if all known information is reported. Library employees may be cautious about revealing information about library patrons because of Georgia's confidentiality statute regarding library records, O.C.G.A. § 24-9-46. It should be noted, however, that the law regarding confidentiality applies to circulation records. Therefore, providing the identity of a suspected abuse victim and that of the parent or caretaker to child protection services does not violate the confidentiality statute.

Finally, personnel should be informed that the mandatory reporting statute does not guarantee anonymity; however, written reports that are provided to law enforcement agencies are not subject to the Open Records Act. Moreover, your local DFACS office may allow

confidential reporting. The statute does provide immunity from civil and criminal liability for a mandatory reporter who makes a report in good faith.

Public libraries strive to be integral in children's educational and recreational pursuits. As a result, libraries are places where children commonly gather. Therefore, additional responsibility for the protection of these children is imposed by law on those who are working and volunteering in libraries. The key to gaining compliance with Georgia law on the reporting of suspected child abuse is through planning and careful instruction to those subject to the statute. Informed personnel who have been properly trained in how to spot abuse and what steps to take when abuse is suspected will not be intimidated by legal responsibilities in this area. Accordingly, it is incumbent upon library administrators to take the time to create a plan for compliance and keep all employees up to date and well informed on what roles they will take in fulfilling the law's requirements.

O.C.G.A. § 19-7-5 Child Abuse Report Form

_____ [Date]

TO: _____ [child welfare agency providing protective services, as designated by the Department of Human Resources, or to an appropriate police authority or district attorney in the absence of such agency].

FROM: _____ [reporter's name & agency]
_____ [contact information]

RE: _____ [Name of Child]

This report of possible child abuse is made pursuant to O.C.G.A. § 19-7-5.

Age: _____
(if known)

Address: _____
(if known)

Names and addresses of parents or caretakers

(if known)

Nature and extent of injuries

(include any evidence of previous injuries).

[Include any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.]

Ga. Code Ann., § 19-7-5

**§ 19-7-5. Reports by physicians, treating personnel, institutions and others as to child abuse;
failure to report suspected child abuse**

Effective: July 1, 2012

(a) 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 conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

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

(1) "Abortion" shall have the same meaning as set forth in Code Section 15-11-111.

(2) "Abused" means subjected to child abuse.

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

(4) "Child abuse" means:

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

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

(C) Sexual abuse of a child; or

(D) Sexual exploitation of a child.

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

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

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

(7) “Pregnancy resource center” means an organization or facility that:

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

(B) Does not provide or refer for abortions;

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

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

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

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

(10) “Sexual abuse” means a person’s employing, using, persuading, inducing, enticing, or coercing any minor who is not that person’s spouse to engage in any act which involves:

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

(B) Bestiality;

(C) Masturbation;

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

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

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

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

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

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

"Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(11) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires that child to engage in:

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

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

(c)(1) The following persons having reasonable cause to believe that a child has been abused shall report or cause reports of that abuse to be made as provided in this Code section:

(A) Physicians licensed to practice medicine, interns, or residents;

(B) Hospital or medical personnel;

(C) Dentists;

(D) Licensed psychologists and persons participating in internships to obtain licensing pursuant to Chapter 39 of Title 43;

(E) Podiatrists;

(F) Registered professional nurses or licensed practical nurses licensed pursuant to Chapter 24 of Title 43 or nurse's aides;

(G) Professional counselors, social workers, or marriage and family therapists licensed pursuant to Chapter 10A of Title 43;

(H) School teachers;

(I) School administrators;

(J) School guidance counselors, visiting teachers, school social workers, or school psychologists certified pursuant to Chapter 2 of Title 20;

(K) Child welfare agency personnel, as that agency is defined pursuant to Code Section 49-5-12;

(L) Child-counseling personnel;

(M) Child service organization personnel;

(N) Law enforcement personnel; or

(O) Reproductive health care facility or pregnancy resource center personnel and volunteers.

(2) If a person is required to report child abuse pursuant to this subsection because that person attends to a child pursuant to such person's duties as an employee of or volunteer at a hospital,

school, social agency, or similar facility, that person shall notify the person in charge of the facility, or the designated delegate thereof, and the person so notified shall report or cause a report to be made in accordance with this Code section. An employee or volunteer who makes a report to the person designated pursuant to this paragraph shall be deemed to have fully complied with this subsection. Under no circumstances shall any person in charge of such hospital, school, agency, or facility, or the designated delegate thereof, to whom such notification has been made exercise any control, restraint, modification, or make other change to the information provided by the reporter, although each of the aforementioned persons may be consulted prior to the making of a report and may provide any additional, relevant, and necessary information when making the report.

(d) Any other person, other than one specified in subsection (c) of this Code section, who has reasonable cause to believe that a child is abused may report or cause reports to be made as provided in this Code section.

(e) An oral report shall be made immediately, but in no case later than 24 hours from the time there is reasonable cause to believe a child has been abused, by telephone or otherwise and followed by a report in writing, if requested, to a child welfare agency providing protective services, as designated by the Department of Human Services, or, in the absence of such agency, to an appropriate police authority or district attorney. If a report of child abuse is made to the child welfare agency or independently discovered by the agency, and the agency has reasonable cause to believe such report is true or the report contains any allegation or evidence of child abuse, then the agency shall immediately notify the appropriate police authority or district attorney. Such reports shall contain the names and addresses of the child and the child's parents or caretakers, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that the reporting person believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator. Photographs of the child's injuries to be used as documentation in support of allegations by hospital employees or volunteers, physicians, law enforcement personnel, school officials, or employees or volunteers of legally mandated public or private child protective agencies may be taken without the permission of the child's parent or guardian. Such photographs shall be made available as soon as possible to the chief welfare agency providing protective services and to the appropriate police authority.

(f) Any person or persons, partnership, firm, corporation, association, hospital, or other entity participating in the making of a report or causing a report to be made to a child welfare agency providing protective services or to an appropriate police authority pursuant to this Code section

or any other law or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, provided such participation pursuant to this Code section or any other law is made in good faith. Any person making a report, whether required by this Code section or not, shall be immune from liability as provided in this subsection.

(g) Suspected child abuse which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report child abuse reported solely within the context of confession or other similar communication required to be kept confidential under church doctrine or practice. When a clergy member receives information about child abuse from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of child abuse from the confession of the perpetrator.

(h) Any person or official required by subsection (c) of 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.

(i) A report of child abuse or information relating thereto and contained in such report, when provided to a law enforcement agency or district attorney pursuant to subsection (e) of this Code section or pursuant to Code Section 49-5-41, shall not be subject to public inspection under Article 4 of Chapter 18 of Title 50 even though such report or information is contained in or part of closed records compiled for law enforcement or prosecution purposes unless:

(1) There is a criminal or civil court proceeding which has been initiated based in whole or in part upon the facts regarding abuse which are alleged in the child abuse reports and the person or entity seeking to inspect such records provides clear and convincing evidence of such proceeding; or

(2) The superior court in the county in which is located the office of the law enforcement agency or district attorney which compiled the records containing such reports, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this

paragraph. When those records are located in more than one county, the application may be made to the superior court of any one of such counties. A copy of any application authorized by this paragraph shall be served on the office of the law enforcement agency or district attorney which compiled the records containing such reports. In cases where the location of the records is unknown to the applicant, the application may be made to the Superior Court of Fulton County. The superior court to which an application is made shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.