

House Bill 578 (AS PASSED HOUSE AND SENATE)

By: Representatives Dempsey of the 13th, Cooper of the 43rd, Oliver of the 82nd, Welch of the 110th, Fleming of the 121st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated,
2 relating to general provisions regarding the Department of Human Services, so as to provide
3 for the review of certain law enforcement conviction data with regard to persons seeking to
4 become volunteers, interns, students, or employees; to provide for related matters; to provide
5 for an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to
9 general provisions regarding the Department of Human Services, is amended by revising
10 Code Section 49-2-14, relating to record search for conviction data on prospective
11 employees, as follows:

12 "49-2-14.

13 (a) As used in this Code section, the term 'conviction data' means a record of a finding or
14 verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime,
15 regardless of whether an appeal of the conviction has been sought.

16 (b) The department may receive from any law enforcement agency conviction data that is
17 relevant to a person whom the department; or its contractors; ~~or a district or county health~~
18 ~~agency~~ is considering as a final selectee for employment or to serve as a volunteer, intern,
19 or student in a position the duties of which involve direct care, treatment, custodial
20 responsibilities, access to confidential or legally protected systems or information, or any
21 combination thereof for its clients or for administrative support functions. ~~The department~~
22 ~~may also receive conviction data which is relevant to a person whom the department, its~~
23 ~~contractors, or a district or county health agency is considering as a final selectee for~~
24 ~~employment in a position if, in the judgment of the employer, a final employment decision~~
25 ~~regarding the selectee can only be made by a review of conviction data in relation to the~~
26 ~~particular duties of the position and the security and safety of clients, the general public,~~

27 ~~or other employees.~~ Further, the department or any licensed child-placing agency,
28 designated by the department to assist it in preparing studies of homes in which children
29 in its custody may be placed, may receive from any law enforcement agency conviction
30 data that is relevant to any adult person who resides in a home where children in the
31 custody of the department may be placed.

32 (c) The department shall establish a uniform method of obtaining conviction data under
33 subsection (a) of this Code section which shall be applicable to the department and its
34 contractors. Such uniform method shall require the submission to the Georgia Crime
35 Information Center of fingerprints and the records search fee in accordance with Code
36 Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall
37 promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau
38 records and an appropriate report and shall promptly conduct a search of its own records
39 and records to which it has access. After receiving the fingerprints and fee, the Georgia
40 Crime Information Center shall notify the department in writing of any derogatory finding,
41 including, but not limited to, any conviction data regarding the fingerprint records check
42 or if there is no such finding.

43 (d) All conviction data received shall be for the exclusive purpose of making employment
44 decisions; or determining the fitness and suitability to provide services to the department
45 or its contractors in the capacity of an employee, volunteer, intern, or student; or decisions
46 concerning children in the custody of the department or who are the subjects of a child
47 protective services referral, complaint, or investigation and shall be privileged and shall not
48 be released or otherwise disclosed to any other person or agency. Immediately following
49 the employment decisions or upon receipt of the conviction data concerning any adult
50 person who has contact with a child who is the subject of a child protective services
51 referral, complaint, or investigation or who resides in a home where children in the custody
52 of the department may be placed, all such conviction data collected by the department or
53 the licensed child-placing agency shall be maintained by the department or child-placing
54 agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of
55 Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the
56 unauthorized release or disclosure of any conviction data shall be as prescribed pursuant
57 to laws regarding and rules or regulations of the Federal Bureau of Investigation and the
58 Georgia Crime Information Center, as is applicable.

59 (e) Notwithstanding subsection (c) of this Code section, when a contractor to this
60 department is a personal care home, Article 14 of Chapter 7 of Title 31 shall apply.

61 (f) The department may promulgate written rules and regulations to implement the
62 provisions of this Code section.

63 (g) The department may receive from any law enforcement agency criminal history
64 information, including arrest and conviction data, and any and all other information which
65 it may be provided pursuant to state or federal law which is relevant to any adult person
66 who resides in a home where children in the custody of the department have been or may
67 be placed or which is relevant to any adult person who resides in the home of or provides
68 care to a child who is the subject of a child protective services referral, complaint, or
69 investigation to the fullest extent permissible by federal and state law, including but not
70 limited to Public Law 92-544. The department shall establish a uniform method of
71 obtaining criminal history information under this subsection. Such method shall require
72 the submission to the Georgia Crime Information Center of fingerprints together with any
73 required records search fee in accordance with Code Section 35-3-35. Upon receipt
74 thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints
75 submitted by the department to the Federal Bureau of Investigation for a search of bureau
76 records and an appropriate report and shall promptly conduct a search of its own records
77 and records to which it has access. Such method shall also permit the submission of the
78 names alone of such adult persons to the proper law enforcement agency when the
79 department is considering placement of a child in exigent circumstances for a name based
80 check of such adult person's criminal history information as maintained by the Georgia
81 Crime Information Center and the Federal Bureau of Investigation. In such exigent
82 circumstances, the department shall submit fingerprints of those adult persons in the
83 placement home, together with any required records search fee, to the Federal Bureau of
84 Investigation within 15 calendar days of the date of the name based check on that person.
85 The fingerprints shall be forwarded to the Federal Bureau of Investigation through the
86 Georgia Crime Information Center in accordance with Code Section 35-3-35. Following
87 the submission of such fingerprints, the department may receive the criminal history
88 information, including arrest and conviction data, relevant to such person. In the event that
89 a child has been placed in exigent circumstances, a name based records search has been
90 requested for any adult person of the placement household, and that adult refuses to provide
91 fingerprints after being requested to do so by the department, the child shall be immediately
92 removed from the placement household by the department, provided that the child is in the
93 custody of the department.

94 (h) The department shall be authorized to conduct a name or descriptor based check of any
95 adult person's criminal history information, including arrest and conviction data, and other
96 information from the Georgia Crime Information Center regarding any adult person who
97 resides in a home where children in the custody of the department have been or may be
98 placed or which is relevant to any adult person who resides in the home of or provides care
99 to a child who is the subject of a child protective services referral, complaint, or

100 investigation without the consent of such adult person and without fingerprint comparison
101 to the fullest extent permissible by federal and state law.
102 (i) If the department is participating in the program described in subparagraph (a)(1)(F)
103 of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of
104 Investigation shall be authorized to retain fingerprints obtained pursuant to this Code
105 section for such program and the department shall notify the individual whose fingerprints
106 were taken of the parameters of such retention."

107 **SECTION 2.**

108 This Act shall become effective upon its approval by the Governor or upon its becoming law
109 without such approval.

110 **SECTION 3.**

111 All laws and parts of laws in conflict with this Act are repealed.