

2009 LEGISLATIVE SESSION

HOUSE RESOLUTION 5:¹ PARAMOUNT RIGHT TO LIFE *Amending Article I, Section I of The Constitution of the State of Georgia*

FIRST SIGNATURE: Rep. Martin Scott (2nd).

CO-SPONSORS: Rep. Charlice Byrd (20th), Rep. Melvin Everson (106th), Rep. James Mills (25th), Rep. Rick Crawford (16th) and Rep. Tom Rice (51st).

SUMMARY: House Resolution 5 proposes to amend Article I, Section I of the Constitution of the State of Georgia to provide that the paramount right to life is vested in each human being from the moment of fertilization without regard to age, race, sex, health, function, or condition of dependency.

STATUS: Not enacted during the 2009 session.

TEXT OF HOUSE RESOLUTION 5

§ 1.

Article I, Section I of the Constitution is amended by re-designating Paragraph XXIX as Paragraph XXX and inserting a new Paragraph XXIX to read as follows:

“Paragraph XXIX. *Paramount right to life.* (a) The rights of every person shall be recognized, among which in the first place is the right of every innocent human being to life. The right to life is the paramount and most fundamental right of a person.

(b) With respect to the fundamental and inalienable rights of all persons guaranteed in this Constitution, the word ‘person’ applies to all human beings, irrespective of age, race, sex, health, function, or condition of dependency, including unborn children at every state of their biological development, including fertilization.

(c) Nothing in this Paragraph shall be construed to limit the right of the State of Georgia to use capital punishment to enforce the laws of this state.

(d) Nothing in this Paragraph shall be construed to limit the right of the State of Georgia to allow and regulate the use of advance directives or living wills.

(e) Nothing in this Paragraph shall be construed to limit the right of the State of Georgia to allow and regulate the use of contraceptives.”

§ 2.

The above proposed amendment to the Constitution shall be published and submitted as provided in Article X, Section I, Paragraph II of the Constitution. The ballot submitting the above proposed amendment shall have written or printed thereon the following:

1. H.R. 5, 150th Gen. Assem., Reg. Sess. (Ga. 2009).

() YES () NO Shall the Constitution of Georgia be amended so as to provide that the paramount right to life is vested in each human being from the moment of fertilization without regard to age, race, sex, health, function, or condition of dependency?"

All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes." All persons desiring to vote against ratifying the proposed amendment shall vote "No." If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this state.

FIRST SIGNATURE'S RATIONALE

Rep. Martin Scott, of the 2nd district, introduced House Resolution 5 to amend the Georgia State Constitution to establish a paramount right to life from the moment of fertilization.² The resolution deals with unborn fetuses, the elderly and those unable to provide their own independent care.³ During a House Judiciary Committee meeting, Rep. Scott argued that the paramount right to life is the most important right conferred upon citizens because without the right to life, no other rights matter.⁴

Rep. Scott first introduced this legislation as House Resolution 536 in the 2007-2008 legislative session. Rep. Scott presented his arguments in favor of the Resolution on February 18, 2008 at a House Judiciary sub-committee meeting. The language of House Resolution 5 is identical to the language of House Resolution 536 which Rep. Scott argued before the sub-committee in the prior legislative session.

In hearings before the House Judiciary sub-committee considering House Resolution 536, Rep. Scott offered some insight into his rationale for the legislation.⁵ Rep. Scott stated that in *Roe v. Wade*, Justice Harry Blackmun opined that "if this suggestion of personhood [of the pre-born] is established, the [abortion rights] case, of course, collapses, for the fetus' right to

2. *Id.*

3. Video Recording of Ga. H. Judy. Comm. Meeting, Feb. 18, 2008 available at http://www.legis.ga.gov/legis/2007_08/house/Committees/judiciary/judyArchives.htm [hereinafter *Video Recording of H. Judy Mar. 13, 2007*].

4. *Id.*

5. *Video Recording of H. Judy Mar. 13, 2007, supra*, note 3.

life is then guaranteed specifically by the [14th] Amendment.”⁶ By introducing House Resolution 5, Rep. Scott aims to make Justice Blackmun’s statement a reality within the current law in Georgia by establishing that personhood be defined at the moment of fertilization.⁷

According to Rep. Scott, the proposed amendment intends to protect the dignity of human life even for the unborn.⁸ Although House Resolution 5 is not a direct facial attack on *Roe*, the purpose of the legislation is to provide a foundation for future legislative, judicial, or executive action.⁹ The issue of legal personhood, if left unaddressed, potentially may cause further unintended consequences when dealing with other related legal issues.¹⁰

Rep. Scott intends to change hearts with this proposed amendment rather than to legislate with a heavy hand or criminalize abortion.¹¹ Moreover, in Rep. Scott’s view, the current political leanings of Georgians increase the possibility of the voters approving this amendment if given the opportunity.¹² Neither the federal congress nor the republican administrations that have come and gone have acted to repress this trend; therefore Rep. Scott felt the only action that can be taken is through state legislative initiatives such as House Resolution 5.¹³

Rep. Scott’s final argument rested on similar provisions of Georgia law. The State of Georgia previously passed legislation such as the Unborn Victims of Violence Act¹⁴ and food and

6. *Id.* (citing *Roe v. Wade*, 410 U.S. 113, 156 (1973)).

7. *Video Recording of H. Judy* Mar. 13, 2007, *supra* note 3.

8. *Id.*

9. *Id.*

10. *Id.* For example, a related issue not addressed specifically in this legislation is in vitro fertilization, where doctors harvest and fertilize embryos, then place them in storage. Currently, the law creates a question as to whether these fertilized embryos are to be considered under custody laws or personal property laws. According to Rep. Scott, defining personhood at the moment of fertilization will help answer those questions.

11. *Id.*

12. *Id.*

13. *Id.*

14. O.G.C.A. §16-5-80 (2008).

water provisions for advanced directives.¹⁵ House Resolution 5 would further Georgia's already established interest in securing the paramount right to life.¹⁶

LEGISLATIVE GENEALOGY

Rep. Scott filed the paramount right to life resolution, House Resolution 5, in the 2007-2008 legislative session as House Resolution 536.¹⁷ Rep. Scott is the primary sponsor for both House Resolution 536 and House Resolution 5. The House Judiciary sub-committee ultimately tabled the resolution during the 2007-2008 session, but not before it held extensive hearings on the resolution. Rep. Scott re-filed the legislation in the 2009-2010 legislative session with nearly identical language. The only change made to the re-filed legislation was deletion of the word "inviolable" contained in section 1(a) of HR 536.¹⁸

I. Consideration of House Resolution 536 by the 2007-2008 Legislative Session

When Rep. Scott introduced House Resolution 536, it was the nation's first paramount right to life legislation.¹⁹ The House assigned the Resolution to the judiciary committee. The first House reading of the Resolution occurred on March 20, 2007, and the second House reading occurred on March 27, 2007.²⁰

On February 18, 2008 and February 20, 2008, the House Judiciary sub-committee heard arguments in favor of and in opposition to House Resolution 536.²¹ Rep. Edward Lindsey, of the 54th district, served as the sub-committee chairman at the February 20, 2008 hearing. Rep. Lindsey began the hearing noting that this proposed amendment would generate a very

15. O.C.G.A. §31-32-11 (2008).

16. *Video Recording of H. Judy*, *supra* note 3. Rep. Scott asserted, "Now is the time. Georgia is the place. Let us vote. Let them live."

17. H.R. 536, 149th Gen. Assem., Reg. Sess. (Ga. 2008).

18. H.R. 536.

19. Karen Kassel Hutto, *Abortion Debate: Georgia Strives to Become First Official "Pro-Life" State with "Personhood" Initiative*, CHRISTIAN LIVING MAGAZINE, March/April Ed., available at http://www.gofishproductions.net/title/study_notes_file/289/garighttolife.pdf

20. H. R. 536.

21. *Video Recording of H. Judy*, *supra* note 3.

emotional and lengthy debate. Rep. Scott spoke first at the hearing, giving his argument in favor of the proposed resolution, and the sub-committee members followed with questions.²²

Rep. Lindsey questioned the fact that many pro-life special interest groups and organizations do not support this proposed amendment. Rep. Scott responded that just as many pro-life groups support the resolution as those who do not.²³ Rep. Scott's Counsel, Mr. Gibb, further responded that the pro-life groups who are in opposition only disagree on the timing of the resolution, that is, they do not feel that the time is right to challenge the *Roe*²⁴ and *Casey*²⁵ decisions because Justice Kennedy would potentially be the swing vote and it is uncertain how the United States Supreme Court would ultimately decide this issue right now.²⁶

Rep. Lindsey was the first to raise the issue of how the language in this proposed amendment would impact existing law in Georgia. Several other sub-committee members raised similar concerns which included the impact on several areas of law, including tort liability law, property law and inheritance law. Rep. Scott and his counsel acknowledged that there will be some impact on current Georgia law.²⁷

Rep. Scott also conceded that he intended the resolution to have some effect on existing law. However, where there are unintended consequences or conflicts with existing Georgia law, he is committed to working with the sub-committee to resolve any such conflicts by modifying the language of the amendment.²⁸

Rep. Lindsey further questioned how the United States Supreme Court would view this amendment in light of existing federal law regarding abortion. Counsel Gibbs responded that the balancing of Georgia's right to define "personhood" against the federal laws that are already in place will establish a *Roe*

22. *Id.*

23. *Id.*

24. *Roe v. Wade*, 410 U.S. 113 (1972).

25. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

26. *Video Recording of H. Judy*, *supra* note 3.

27. *Id.*

28. *Id.*

challenge on a federal level.²⁹

Rep. Lindsey also was the first of many to question whether this legislation provided exceptions for the victims of rape and incest who have become impregnated by their attacker. Rep. Scott responded that under the current language of House Resolution 536, there would be no provision or exception that would allow an abortion in the case of an incest or rape victim.³⁰

Rep. Mary Margaret Oliver, of the 83rd district, asked Rep. Scott when life begins. Rep. Scott responded that he is not coming from a theological perspective; his argument is legal and scientific. However, Rep. Oliver further questioned why Rep. Scott quoted the bible. This line of questioning continued throughout the hearing. Rep. Scott did state that the legal and scientific arguments inextricably are woven with theological perspectives so far as every person comes to the table with their religious presuppositions. Rep. Scott stated that source after source establishes that life begins at conception. However, he added that we, as a society, know more now, when life, medically, begins than we did in 1973 when the Supreme Court decided *Roe*.³¹

Rep. Oliver questioned how the proposed amendment would affect existing laws regarding advanced directives and living wills and the rights associated with them. Rep. Scott conceded that this area of the law would need further legislative clarification, because these rights would be questioned under the current language of the resolution. Rep. Oliver stated that if life begins at fertilization, it would be virtually impossible to permit certain forms of contraception. Rep. Scott responded that the legislature should deal with that issue as it arises.³²

Rep. Barry Flemming, of the 117th district, questioned whether this proposed amendment would provide for a “life of the mother exception”. Rep. Scott responded that House Resolution 5 does not threaten the mother’s life because Georgia has existing laws regarding standards of care and priority of life that require legislators to make these decisions.³³

29. *Id.*

30. *Id.*

31. *Id.*

32. *Video Recording of H. Judy Mar. 13, 2007, supra note 3.*

33. *Id.*

Rep. Flemming proposed adding clause (f) to section 2 of the proposed legislation to make an exception for the mother's right to life.³⁴ Rep. Scott explained that such an exception had already been considered, but that the legislative counsel had determined that it was unnecessary and advised against it.³⁵ However, Rep. Scott stated that he would be willing to consider adding clause (f) upon hearing additional testimony and the sub-committees opinion.³⁶ Rep. Scott responded in the same manner when questioned about an exception for the life of another baby sharing the womb that may be in jeopardy.³⁷

Rep. Rich Golick, of the 34th district, questioned the process of in vitro fertilization (IVF) as it relates to fertilized embryos placed in storage. Rep. Golick was concerned with the cost of this storage and how this amendment treats these fertilized embryos which the amendment defines as a legal people. Rep. Scott informed the sub-committee of "snowflake adoption," otherwise known as the adoption of fertilized embryos.³⁸ Further, Rep. Scott stated that this proposed amendment would ensure reasonable care when creating fertilized embryos.³⁹

A panel of law school professors spoke before the sub-committee giving their professional opinions about the legal consequences of the proposed resolution.⁴⁰ Professor David Oedel,⁴¹ Professor Eric Segall,⁴² Professor Dan Coenen,⁴³ and Professor Daniel F. Piar⁴⁴ all appeared before the sub-committee.

Professor Coenen discussed the consequences that may arise under the language of this proposed amendment.⁴⁵ For example,

34. *Id.*

35. *Id.*

36. *Video Recording of H. Judy* Mar. 13, 2007, *supra* note 3.

37. *Id.*

38. Nightline Christian Life, <http://www.nightlight.org/snowflakeadoption.htm> (last visited April 6, 2009).

39. *Video Recording of H. Judy*, *supra* note 3.

40. *Id.*

41. Professor of Law, Mercer University School of Law.

42. Professor of Law, Georgia State University.

43. University Professor, University of Georgia.

44. Dean of Scholarship and Professor of Law, Atlanta's John Marshall Law School.

45. *Video Recording of H. Judy*, *supra* note 3.

Georgia's basic statutory language currently governs abortion in two ways.⁴⁶ First, it regulates the conditions under which a doctor may perform an abortion, and second, it criminalizes abortions not performed in compliance with these statutory regulations.⁴⁷ By defining "personhood" at the moment of fertilization, the proposed amendment would eliminate the first governing principal as abortions would no longer be regulated; abortions would be prohibited as the fetus would have the status of a person and would be protected under the 14th Amendment.⁴⁸ The only governing statute remaining regarding abortion in Georgia would be the criminal penalty, which would also violate the Constitution of the United States.⁴⁹

Professor Segall told the sub-committee that this proposed amendment clearly violates the paramount and supreme law created by the *Roe*⁵⁰ and *Casey*⁵¹ decisions. Professor Segall stated that the Bill is a "flagrant and clear violation of federal law."⁵² He further discussed of the dangers of turning over all of these decisions and legal issues to the exclusive hands of the judiciary to determine.⁵³ Once the General Assembly passes a constitutional amendment, it is difficult to change consequences that occur as result of the practical implementation of that amendment.⁵⁴ Professor Coenen also pointed out this proposed legislation may, in effect, eliminate in vitro fertilization programs.⁵⁵

Professor Daniel Piar stated that this is a "fantasy" challenge to *Roe* because this would not be the test case for which the

46. *Id.*; see also O.C.G.A. § 16-12-140 (a) (2008) (Except as otherwise provided in Code Section 16-12-141, a person commits the offense of criminal abortion when he administers any medicine, drugs, or other substance whatever to any woman or when he uses any instrument or other means whatever upon any woman with intent to produce a miscarriage or abortion. (b) A person convicted of the offense of criminal abortion shall be punished by imprisonment for not less than one nor more than ten years.).

47. *Id.*

48. *Id.*

49. *Video Recording of H. Judy, supra* note 3.

50. *Roe v. Wade*, 410 U.S. 113 (1972).

51. *Planned Parenthood v. Casey*, 505 U.S. 833(1992).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

Supreme Court of the United States would choose to grant a writ of certiorari.⁵⁶ Professor Piar asserted that this resolution is irrational and chaotic, and the fact that a clause (f) is even being considered further demonstrates this point.⁵⁷ Professor Piar stated that the additions of the exception clauses, (c) death penalty, (d) advance directives and living wills, and (e) contraceptives, do not solve the problems which they intend to remedy.⁵⁸ Further, the provisions are “cobbled together” in a manner that would cast doubt on the credibility of the law in Georgia should this proposed amendment pass.⁵⁹

All of the four law professors agreed that the legislation violates Georgia’s one-subject rule regarding legislation.⁶⁰ It would, therefore, be unlikely that the legislation would reach a federal constitutional challenge. Professor Odel stated that there are a plethora of issues contained in the language of this legislation, likely not even addressing abortion.⁶¹ Further, problems could arise from federal preemption in determining which constitutional rights are superior.⁶² Rep. Flemming questioned the group of law school professors as to what would be a more effective legislative measure for challenging abortion.⁶³ Professor Coenen said that taking legislative measures that would make it more difficult to secure an abortion would be more effective than the current proposed amendment.⁶⁴ Professor Odel suggested that incremental changes would be more effective than the overly broad language used in this proposed amendment.⁶⁵

Ultimately, the sub-committee voted in a 4-3 decision to table the legislation. Rep. Scott re-filed the proposed amendment in

56. *Video Recording of H. Judy, supra* note 3.

57. *Id.*

58. *Video Recording of H. Judy, supra* note 3.

59. *Id.*

60. GA. CONST. art. III, § 5, ¶ 3 (“No bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof.”)

61. *Video Recording of H. Judy, supra* note 3.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Video Recording of H. Judy, supra* note 3.

the 2009-2010 legislative session as House Resolution 5.⁶⁶

*B. Consideration of House Resolution 5 by the 2009-2010
Legislative Session*

Approximately nine months after the hearing on House Resolution 536, House Resolution 5 was re-introduced with identical language except for the deletion of the word “inviolable” as explained above.⁶⁷ The current version of House Resolution 5 does not contain a clause (f) and does not provide exceptions for the life of the mother or another baby sharing the womb with which Rep. Flemming was concerned.

House Resolution 5 was pre-filed with the House in the 2009-2010 legislative session on November 18, 2008.⁶⁸ House Resolution 5 was assigned to the Judiciary Committee, and the first House reading of House Resolution 5 occurred on January 16, 2009 followed by the second House reading on January 26, 2009.⁶⁹ There has been no further activity on House Resolution 5.⁷⁰

PREPARED BY: Aimee Faught

66. Steven Ertelt, *Georgia House Panel Kills Personhood Bill Protecting Unborn on Abortion*, Feb. 20, 2008, available at <http://www.lifenews.com/state2923.html>

67. H.R. 5.

68. State of Ga. Final Composite Sheet, H.R. 5, available at: http://www.legis.ga.gov/legis/2009_10/composite/HComposite.pdf.

69. *Id.*

70. *Id.*

**HOUSE BILL 10:¹ GEORGIA CRIME INFORMATION CENTER;
PROVIDE ACCESS TO CRIMINAL HISTORY; CHANGE
PROVISIONS
*Amending O.C.G.A. §35-3-34 and §35-3-35***

FIRST SIGNATURE: Rep. Kevin Levitas (82nd).

CO-SPONSORS: Rep. Matt Ramsey (72nd), Rep. Alan Powell (29th), Rep. Willie Talton (145th), Rep. Larry O'Neal (146th) and Rep. Mark Hatfield (177th).

SUMMARY: House Bill 10 seeks to amend O.C.G.A. §§ 35-3-34 and 35-3-35, relating to the Georgia Crime Information Center, to provide private individuals, businesses, public agencies and political subdivision access to an individual's Georgia criminal history records without the individual's consent or fingerprints. Additionally, House Bill 10 adjusts the fees associated with these records and includes provisions to ensure the Bill is consistent with the Official Code of Georgia.

STATUS: Not enacted during the 2009 session.

TEXT OF HOUSE BILL 10

§ 1.

Article 2 of Chapter 3 of Title 35 the Official Code of Georgia Annotated, relating to the Georgia Crime Information Center, is amended by revising Code Section 34-3-34, relating to disclosure and dissemination of criminal records to private persons and businesses, as follows:

“35-3-34.

(a) The center shall be authorized to:

(1) Make Georgia criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting Georgia criminal history records shall, at the time of the request, either provide the fingerprints of the person whose records are requested ~~or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth in such manner as prescribed by the center, which may include electronic imaging of a person's fingerprints, or provide sufficient information to identify the individual whose Georgia criminal history is being requested;~~

(B) The center ~~may~~ shall not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by

1. H.B. 10, 150th Gen. Assem., Reg. Sess. (Ga. 2009).

Code Section 35-3-34.1 or other law; and

(C) ~~The center shall not provide records of juveniles adjudicated delinquent or records otherwise protected from disclosure pursuant to law; and~~

~~(C)(D)~~ When the identifying information provided is sufficient to identify persons whose records are requested electronically, the center may disseminate electronically Georgia criminal history records of in-state felony convictions, pleas, and sentences without:

~~(i) Fingerprint fingerprint comparison; or~~

~~(ii) Consent consent of the person whose records are requested; or~~

(2) Make Georgia criminal history records of the defendant or witnesses in a criminal action available to counsel for the defendant upon receipt of a written request from the defendant's counsel under the following conditions:

(A) Such request shall contain the style of the case and the name and identifying information for each person whose records are requested. Such request shall be submitted to the center;

(B) In cases where the court has determined the defendant to be indigent, any fees authorized by law shall be waived; and

(C) Disclosure of criminal history information to the defendant's counsel as provided in this paragraph shall be solely in such counsel's capacity as an officer of the court. Any use of such information in a manner not authorized by law or the court in which such action is pending where the records were disclosed shall constitute a violation of Code Section 35-3-38; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue ~~which that~~ approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose ~~record records~~ were obtained pursuant to this Code section, the person ~~will~~ shall be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a ~~record was~~ records were obtained from the center, the specific contents of ~~the such record records~~, and the effect ~~the record~~ such records had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with ~~the any~~ dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate Georgia criminal history records, without fingerprint comparison, ~~or~~ prior contact with the center, or consent of the person whose criminal records are requested to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as needed to reimburse such agencies for their direct and indirect costs related to the providing of such disseminations. Such agencies shall have the same immunity as provided in subsection (c) of this Code section.

~~(d.1) Reserved.~~

~~(d.2) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:~~

~~(1) Fingerprint comparison;~~

~~(2) Prior contact with the center; or~~

~~(3) Consent of the person whose records are requested.~~

~~Such information may be disseminated to private individuals and businesses under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.~~

~~(d.3)(e)~~ No fee charged pursuant to subsection (d) of this Code section may ~~may~~ shall exceed \$20.00 per person whose criminal history ~~record is~~ records are requested or shall be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

~~(d.4)(f)~~ The center shall place a high priority on inquiries from any nuclear power facility requesting a criminal history and shall respond to such requests as expeditiously as possible, but in no event shall a response be made more than two business days following receipt of the request.

~~(e)(g)~~(1) The ~~Georgia Crime Information Center~~ center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

(2) The records of the ~~Georgia Crime Information Center~~ center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the ~~Georgia Crime Information Center~~ center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the ~~Georgia Crime Information Center~~ center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

~~(f)(h)~~ The council ~~is~~ shall be empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section."

§ 2.

Said article is further amended by revising Code Section 35-3-35, relating to disclosure and dissemination of records to public agencies and political subdivisions, as follows:

"35-3-35.

(a) The center shall be authorized to:

(1) Make Georgia criminal history records maintained by the center available to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies or their designated representatives, under the following conditions:

(A) Public agencies or political subdivisions shall, at the time of the request, either provide the fingerprints of the person whose records are requested in such manner prescribed by the center, which may include the electronic imaging of a person's fingerprints, ~~or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth; provided, however, that the provisions of this paragraph shall supersede any other provision relating to the submission of fingerprints to the center or provide sufficient information to identify the individual whose Georgia criminal history is being requested;~~

(B) The center ~~may~~ shall not provide records of arrests, charges, or sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law; ~~and~~

(C) ~~The center shall not provide records of juveniles adjudicated delinquent or records otherwise protected from disclosure pursuant to law; and~~

~~(D)~~ When the identifying information provided is sufficient to identify persons whose records are requested ~~electronically~~, the center may disseminate electronically Georgia criminal history records of ~~in-state felony convictions, pleas, and sentences~~ without:

~~(i)~~ Fingerprint fingerprint comparison; or

~~(ii)~~ Consent consent of the person whose records are requested;

~~(1.1) Make criminal history records maintained by the center available to any county board of registrars or county board of registration and election. The making of an application for voter registration shall be deemed to be consent of the person making the application to release such records to the county board of registrars or county board of registration and election. Such records shall be requested for the sole purpose of verification of information provided on voter registration cards by registration applicants;~~

~~(1-2)~~(2) Make Georgia criminal history records maintained by the center and national criminal history records maintained by the Federal Bureau of Investigation, obtained by the center, available to the governing authority of any county or municipality; for any applicant or licensee in a specified occupation for which such local governing authority has adopted an ordinance or resolution requiring such applicants or licensees in a particular occupation or profession regulated by the governing authority to be fingerprinted as a condition of submitting an application or obtaining or renewing a license. The center shall establish a uniform method of obtaining criminal history records required under this paragraph. Such uniform method shall require the submission to the center of two complete sets of fingerprints and the records search fee. Upon receipt thereof, the center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the center shall notify the requesting local government authority in writing of any derogatory finding, including, but not limited to, any criminal record data regarding the fingerprint records check or if there is no such finding. Nothing in this paragraph shall prevent the local governing authority from obtaining national criminal history records directly from the Federal Bureau of Investigation, if an ordinance or resolution requiring the fingerprints of an applicant or licensee of a particular occupation or profession regulated by the local governing authority has been adopted by such governing authority of the county or municipality; and

~~(2)~~(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which that approximates, ~~as nearly as practicable, the direct and indirect~~ costs to the state for providing such disseminations.

(b) In the event an employment or licensing decision is made adverse to a person whose ~~record was~~ records were obtained pursuant to this Code section, the person ~~will~~ shall be informed by the public agency, political subdivision, authority or instrumentality, or licensing or regulatory agency making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that ~~a record was~~ records were obtained from the center, the specific contents of ~~the record~~ such records, and the effect ~~the record~~ such records had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information disseminated nor have any liability for defamation, invasion of privacy, negligence, ~~nor~~ or any other claim in connection with any dissemination pursuant to this Code section and shall be immune from suit based upon such claims.

(d) Local criminal justice agencies may disseminate Georgia criminal history records ~~without fingerprint comparison, prior contact with the center, or consent of the person whose criminal records are requested~~ to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies, under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as necessary to reimburse such agencies for their direct and indirect costs associated with providing such disseminations. Such agencies shall have the same immunity as provided in subsection (c) of this Code section.

~~(d.1) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:~~

~~(1) Fingerprint comparison;~~

~~(2) Prior contact with the center; or~~

~~(3) Consent of the person whose records are requested.~~

~~Such information may be disseminated to entities to which such records may be made available under subsection (d) of this Code section under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.~~

~~(4-2)~~(e) No fee charged pursuant to subsection (d) of this Code section may shall exceed \$20.00 per person whose criminal history ~~record is~~ records are requested or shall be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

~~(e)~~(f) The council is shall be empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section."

§ 3.

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

FIRST SIGNATURE'S RATIONALE

Rep. Kevin Levitas, of the 82nd district, introduced House Bill 10 in response to recent increases in career shoplifting and thefts of metal.² According to Rep. Levitas, these crimes have caused millions of dollars of losses to Georgia businesses and citizens, but the current laws would not allow the Georgia Crime Information Center (“GCIC”) to release criminal histories on these offenses to the loss management officers or private citizens trying to mitigate or prevent such losses.³

Rep. Levitas intended House Bill 10 to be a follow up to O.C.G.A. § 10-1-357, a law addressing metal thefts which the General Assembly enacted in 2007.⁴ This law allows prosecutors to seek felony convictions for metals thefts by assessing the costs of the thefts to include restoring property to its pre-theft condition instead of including only the cost of the metal, which, in most cases, would lead to only misdemeanor convictions.⁵ Rep. Levitas views House Bill 10 as the next step in the prevention of, and punishment for, loss caused by career shoplifting and metal theft because House Bill 10 would allow businesses and private individuals to gain access to a person’s criminal history without that person’s consent or fingerprints.⁶

LEGISLATIVE GENEALOGY

Rep. Levitas pre-filed House Bill 10 on November 17, 2008.⁷ The first reading of the Bill took place on January 16, 2009, and the House referred the Bill to the Judiciary Non-Civil

2. Interview with Rep. Kevin Levitas, H. Dist. No. 82 in Atlanta, Ga. (Mar. 12, 2009) [hereinafter *Levitas Interview*].

3. *Id.*

4. *Id.*

5. O.C.G.A. § 10-1-357 (2007).

6. *Levitas Interview*, *supra* note 2; Ga. Gen. Assem., H.B. 10, available at http://www.legis.state.ga.us/legis/2009_10/fulltext/hb10.htm.

7. Ga. Gen. Assem., H.B. 10, available at http://www.legis.ga.gov/legis/2009_10/sum/hb10.htm (last visited Mar. 12, 2009).

Committee.⁸ The second reading of House Bill 10 occurred on January 26, 2009.⁹ The Judiciary Non-Civil Committee did not discuss House Bill 10 prior to cross-over day on March 12, 2009.¹⁰ Rep. Levitas anticipates the Judiciary Non-Civil Committee will begin discussions of House Bill 10 in the summer of 2009.¹¹ He also predicts that, before the Bill can pass, its scope will be narrowed to dispense with the consent or fingerprints requirement for only those criminal histories that pertain to shoplifting or metal thefts.

PREPARED BY: Amelia A. Ragan

8. *Id.*

9. *Id.*

10. *Levitas Interview, supra* note 2.

11. *Id.*

**HOUSE BILL 16:¹ ELECTRONIC TRACKING WITHOUT
CONSENT**
Creating O.C.G.A. § 16-11-62.1 and O.C.G.A. § 17-5-22.1;

FIRST SIGNATURE: Rep. Kevin Levitas (82nd).

CO-SPONSORS: Rep. John Lunsford (110th), Rep. Joe Wilkinson (52nd), Rep. Sean Jerguson (22nd), Rep. Mike Glanton (76th), and Rep. Mike Cheokas (134th).

SUMMARY: House Bill 16 seeks to amend Titles 16 and 17 of the Georgia Code by adding new code sections that place limitations on the use of electronic tracking devices without an individual's consent. These proposed provisions of House Bill 16 prohibiting electronic monitoring of individuals without their consent are not intended to apply to law enforcement, military law enforcement personnel or caregivers and guardians in certain circumstances of necessity.

STATUS: Not enacted during the 2009 session.

TEXT OF HOUSE BILL 16

§ 1.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by adding a new Code section to read as follows:

"16-11-62.1.

(a) As used in this Code section, the term 'tracking device' means any device that reveals its location or movement by the transmission of electronic signals.

(b) Except as otherwise provided in this Code section, no person shall use a tracking device to determine the location or movement of another person without such other person's consent.

(c) Official law enforcement agencies shall be specifically authorized to use tracking devices pursuant to Code Section 17-5-22.1.

(d) This Code section shall not apply:

(1) When the owner or lienholder of a vehicle has consented to the use of a tracking device with respect to such vehicle;

(2) When the lessor or lessee of a vehicle and the person operating such vehicle have consented to the use of a tracking device with respect to such vehicle;

(3) To official actions of an official law enforcement agency acting in a law enforcement capacity;

(4) To actions of United States military law enforcement personnel in the performance of their official duties;

(5) To actions of a parent, legal guardian, or person in loco parentis with respect to determining the

1. H.B. 16, 150th Gen. Assem., Reg. Sess. (Ga. 2009).

location or movement of a child or other person with whom such parent, legal guardian, or person in loco parentis has such legal relationship;

(6) To actions of a family member or caregiver with respect to determining the location or movement of a patient or family member with a diagnosis by a licensed physician of Alzheimer's disease, vascular dementia, Pick's disease, Creutzfeldt-Jakob disease, Parkinson's disease, or Lewy body dementia;

(7) To actions of a facility licensed pursuant to Title 31 with respect to determining the location or movement of a patient when such device is deemed medically necessary by the patient's physician;

(8) To actions of a private detective who is licensed pursuant to Chapter 38 of Title 43 while in the performance of duties that are authorized for such detective; or

(9) To the provision of a commercial service, such as mobile telephone service or vehicle safety or security service, which allows the provider of such service to determine the location or movement of a device provided to a customer of such commercial service for the purpose of providing such commercial service.

(e) Notwithstanding subsection (d) of this Code section, no person shall be required to be implanted with a tracking device pursuant to this Code section.

(f) Any person violating this Code section shall upon conviction be guilty of a misdemeanor; provided, however, that it shall not be a violation of this Code section to use a tracking device to determine the location or movement of another person without such other person's consent if such person is an occupant of a vehicle where use of such tracking device is permissible according to the provisions of subsection (d) of this Code section."

§2.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by adding a new Code section to read as follows:

"17-5-22.1.

(a) As used in this Code section, the term 'tracking device' means an electronic or mechanical device which, when placed or installed upon a person or object, permits other persons to remotely determine or track the position and movement of such person or object, but the term shall not include:

(1) Devices, such as a cellular telephone or other personal electronic device, which include as an incidental feature the capability of determining the location of such devices by utilizing a global positioning satellite system; or

(2) Devices which are installed or utilized with the knowledge and consent of the owner or user of the device or, in the case of a minor, with the knowledge and consent of his or her parent or guardian.

(b) Upon the written application of any certified peace officer of this state or its political subdivisions charged with the duty of enforcing the criminal laws and otherwise as authorized in Code Section 17-5-20 under oath or affirmation, a judge of any court in this state authorized to issue search warrants pursuant to Code Section 17-5-21 may issue a search warrant authorizing the installation, use, and removal of a tracking device subject to the following conditions:

(1) The application shall be made before a judge of the superior court with the authority to issue warrants within the geographic jurisdiction where such tracking device is to be installed;

(2) The application shall set forth facts sufficient to establish probable cause to believe that a particular crime has been committed, is being committed, or will be committed and that the person or object to be tracked is involved, was involved, or will be involved in the commission or facilitation of such crime;

(3) The application shall set forth facts sufficient to establish probable cause to believe that the use of a tracking device will result in the prevention of a criminal offense under investigation, the seizure of evidence relevant to the investigation or prosecution of a criminal offense, or the whereabouts of a fugitive from justice or a suspect, victim, or witness relating to a criminal offense;

(4) The application shall particularly describe the person or object upon which a tracking device is to be installed;

(5) A tracking device authorized by this Code section shall be installed within ten days after the issuance of the warrant and shall be installed within the geographic jurisdiction of the issuing judge. If the tracking device is not installed within that time, the warrant shall be returned to the issuing judge as unserved. The date and time of installation shall be recorded and included in the return made to the issuing judge;

(6)(A) A search warrant issued pursuant to this Code section shall authorize the use of a tracking device for a reasonable period of time, not to exceed 45 days, except as provided in subparagraph (B) of this paragraph, measured from the date such tracking device is installed upon the person or object to be tracked.

(B) Upon written application for extension and upon a finding of good cause, the issuing judge may authorize one or more extensions for a reasonable period of time, not to exceed 45 days each;

(7) When the period of time authorized for the use of a tracking device or the last extension thereof has expired, monitoring of such tracking device shall be discontinued immediately;

(8) Within ten days after the period of time authorized for the use of a tracking device or the last extension thereof has expired, the officer executing the warrant shall make a return thereof to the issuing judge. The return shall specify the date and time such tracking device was installed and the address or location of installation of such tracking device, the date and time that monitoring was discontinued, and a general summary of the movements of the object or person tracked during the duration of the surveillance;

(9) Within ten days after the period of time authorized for the use of a tracking device or the last extension thereof has expired, the officer executing a search warrant issued pursuant to this Code section shall serve a copy of such warrant on the person who was tracked or whose property was tracked. Service shall be accomplished by delivering a copy to such person or by leaving a copy at such person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location or by mailing a copy to such person's last known address. Upon the request of the state or the officer executing the warrant, the issuing judge may delay notice for a reasonable time; provided, however, that where such notice is delayed, such notice shall be served no later than ten days after issuance of an arrest warrant, indictment, or accusation based wholly or in part upon information derived from the use of a tracking device;

(10) A tracking device installed and used under the authority of a warrant issued pursuant to this Code section may be used within the jurisdiction of the issuing court as well as outside such jurisdiction if such tracking device was installed within the jurisdiction of the issuing court; and

(11) The warrant and any extension thereof, the application upon which the warrant and extensions, if any, were issued, the affidavit supporting the warrant and extensions, if any, the return, and any request for and order granting a delay in the serving of notice shall be filed with the clerk of the court of the issuing judge, or with the court if so ordered, at the time the return is made or when the warrant has been returned not executed; provided, however, that the issuing judge may order that such documents be sealed while an investigation remains ongoing until such time that an arrest warrant, indictment, or accusation based wholly or in part upon information derived from the use of the tracking device is issued.

(c)(1) Any investigative or law enforcement officer, specially designated in writing for such purpose by the Attorney General or by a district attorney, who reasonably determines that:

(A) An emergency situation exists that involves:

(i) Immediate danger of death or serious bodily injury to any person; or

(ii) Conspiratorial activities characteristic of organized crime

that requires the installation and use of a tracking device before an order authorizing such installation and use can, with due diligence, be obtained; and

(B) There are grounds upon which a search warrant pursuant to subsection (b) of this Code section could be issued to authorize such installation and use,

may have installed and use a tracking device if, within 48 hours of the time the tracking device is installed, an order approving the installation or use is issued in accordance with subsection (b) of this Code section.

(2) In the event that an application for a search warrant made pursuant to this subsection is granted, then the tracking device shall be installed and used in accordance with the provisions of subsection (b) of this Code section.

(3) In the event that an application for a search warrant made pursuant to this subsection is denied or in any event where the installation or use of the tracking device is terminated without a search warrant having been issued, any tracking information or other surveillance effected pursuant to this subsection shall be confidential and shall not be disclosed or be admissible in any court of this state except to prove violations of this Code section."

§ 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply with respect to conduct on and after that date.

§ 4.

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

FIRST SIGNATURE'S RATIONALE

Rep. Kevin Levitas, of the 82nd, introduced House Bill 16 in response to a news report in which Gwinnett County District Attorney Danny Porter expressed concern over the current law regarding electronic tracking devices. Presently, it is not a crime for an individual to place a tracking device on another person's vehicle. Rep. Levitas was troubled when he learned of the current state of the law and felt that the invasive nature of being able to track the movement of other people was unwarranted. Rep. Levitas stated that the current law was not in the best interest of the people of Georgia.²

LEGISLATIVE GENEALOGY

Rep. Levitas pre-filed House Bill 16 on November 17, 2008, hoping to raise awareness of the proposed Bill and to receive feedback from law enforcement and other industries. Initially, three major industries expressed concern to Rep. Levitas about House Bill 16: private investigators, high risk auto financiers, and nursing facilities housing Alzheimer's patients. Other House Representatives conveyed trepidation about law enforcement abuse and wanted to add a provision to House Bill 16 that would require law enforcement to obtain a search warrant before placing tracking devices on vehicles. Finally, multiple representatives suggested that language be added to House Bill 16 to prohibit insertion of sub-dermal tracking devices, which are tracking devices placed under the skin.³

Rep. Levitas worked with individuals from the high risk auto finance industry, the private investigation industry, and nursing home facilities to amend House Bill 16 to include provisions that exempt use of electronic tracking devices by these particular industries. Additionally, Rep. Levitas included a prohibition on sub-dermal devices in the revised version of House Bill 16.⁴

2. Interview with Rep. Kevin Levitas, H. Dist. No. 82 (February 26, 2009) [hereinafter *Levitas Interview*].

3. *Id.*

4. Interview with Rep. Kevin Levitas, H. Dist. No. 82 (March 14, 2009) [hereinafter *Levitas Interview 2*].

House Bill 16 was amended a second time to expand the scope of whom, and under what conditions, a family member or caregiver may use electronic surveillance equipment to track individuals with certain enumerated conditions.⁵ Furthermore, House Bill 16 was amended to provide that the bill does not apply to facilities licensed under Title 31⁶, if the patient's doctor deems such tracking necessary.⁷ Additionally, House Bill 16 was amended to include a provision that states it is not illegal to track an individual if that person is an occupant of a vehicle where use of electronic tracking is permissible.⁸ Rep. Levitas stated that the provision concerning the use of electronic tracking by the private investigators generated concern about possible abuse.⁹ Consequently, Rep. Jacobs suggested the floor amendment to strike this provision.¹⁰

On March 12, 2009, the House passed House Bill 16 by a vote of 155 to 8.¹¹ Although the House passed House Bill 16, Rep. Levitas feels that striking the private investigator provision from the Bill would lead to House Bill 16 stalling in the Senate.¹² In the Senate, Senator Bill Hamrick sponsored House Bill 16, and the Senate read and referred on March 17, 2009.¹³

The Senate Committee on Special Judiciary introduced and adopted a substitute to House Bill 16 on March 26, 2009.¹⁴ The substitute made substantial changes to the House Bill 16 including a provision that reintroduces the private investigator provision. Additionally, the substitute to House Bill 16 amends

5. Ga. Gen. Assem., H.B. 16, *available at* http://www.legis.state.ga.us/legis/2009_10/versions/hb16_HB_16_CSFA_7.htm (last visited Mar. 23, 2009).

6. O.C.G.A. §§ 31-1-1-46-5 (2007) (setting forth the rules and regulations governing health-related issues in the state of Georgia).

7. Ga. Gen. Assem., H.B. 16, *available at* http://www.legis.state.ga.us/legis/2009_10/versions/hb16_HB_16_CSFA_7.htm.

8. *Id.*

9. *Levitas Interview 2, supra* note 10.

10. *Id.*

11. Ga. Gen. Assem., H.B. 16 *available at* http://www.legis.ga.gov/legis/2009_10/sum/hb16.htm (last visited Mar. 26, 2009).

12. *Levitas Interview 2, supra* note 10.

13. Ga. Gen. Assem., H.B. 16, *available at* http://www.legis.state.ga.us/legis/2009_10/versions/hb16_HB_16_CSFA_7.htm.

14. HB 16, *supra* note 17.

Title 17 by adding a new code section, O.C.G.A. § 17-5-22.1, to define the term ‘tracking device’ and explain how such devices may be used, and a sub-section that provides the necessary guidance and procedures concerning the use of tracking devices in emergency situations. Moreover, the substitute sets forth regulations controlling the application, issuance and use of a warrant to use electronic tracking devices by law enforcement. The Senate tabled House Bill 16 on April 1, 2009. On the last day of session, the Senate revisited House Bill 16 and passed the Bill by a vote of 39-10.¹⁵ At 11:57 PM on the final day of the session, the House voted not to suspend House Rule 146.6,¹⁶ and consequently, there was no time to vote on House Bill 16 prior to the end of the session.¹⁷

PREPARED BY: Jake Stone

15. *Georgia Senate Session Day 40: Live Broadcast* (Georgia Legislative Network internet broadcast Apr. 3, 2009), archived at: http://www.georgia.gov/00/article/0,2086,4802_6107103_129987583,00.htm l (go to April 3, 2009, (III)).

16. Rules, Ethics, and Decorum of the House of Reps., R. 146.6 (Ga. House of Reps. 2009), available at http://www.legis.ga.gov/legis/2009_10/house/downloads/Rules2009.pdf

(providing that “All reports of committees of conference shall be printed and distributed to the Representatives at least one hour prior to consideration of the same unless such requirement is dispensed with by a majority vote of all members elected to the House.”).

17. *Supra* note 15.

HOUSE BILL 171:¹ PUBLIC RECORD DISCLOSURE
Amending O.C.G.A. § 50-18-72

FIRST SIGNATURE: Rep. Judy Manning (32nd).

SUMMARY: House Bill 171 amends O.C.G.A. § 50-18-72 so that the Georgia Open Records Act does not require disclosure of information which individuals provided to local government for purposes of neighborhood watch or public safety notification programs.

STATUS: Not enacted in 2009 Legislative Session.

TEXT OF HOUSE BILL 171

§ 1.

Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to inspection of public records, is amended by revising paragraph (11.2) of subsection (a) of Code Section 50-18-72, relating to when public disclosure is not required, as follows: “(11.2) Records that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;”.

§ 2.

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

FIRST SIGNATURE’S RATIONALE

Rep. Judy Manning, of the 32nd district, introduced House Bill 171 during the 2009 session in response to commercial entities using Georgia’s Open Records Act² to obtain individuals’ e-mail addresses from local government agencies for solicitation purposes.³ The entities obtained e-mail addresses

1. H.B. 171, 150th Gen. Assem., Reg. Sess. (Ga. 2009).

2. O.C.G.A. §§ 50-18-70-77 (2008) [hereinafter *Georgia Open Records Act*].

3. See Video Recording of Governmental Affairs Comm. Meeting, Mar. 3, 2009, available at http://www.legis.state.ga.us/legis/2009_10/house/Committees/govAffairs/gahgaff.htm (last visited Mar. 24, 2009) [hereinafter *GAC Meeting*].

of individuals who had registered with the Cobb County Police Email Notification System (PENS), a public safety e-mail notification program.⁴ Residents complained to county officials when they began receiving unsolicited e-mails.⁵ The Bill adds “e-mail addresses” and information gathered in connection “with neighborhood watch or public safety notification programs” to the list of public records exempted from disclosure under Georgia’s Open Records Act by O.C.G.A. § 50-18-72(11.2)(a).⁶

LEGISLATIVE GENEALOGY

The first reading of the Bill in the House occurred on January 28, 2009, and the House assigned the Bill to the House Governmental Affairs Committee.⁷ On January 29, 2009, the Bill was read for the second time.⁸ The original bill added a section to O.C.G.A. § 50-18-72(11), which is a list of public records exempted from disclosure under Georgia’s Open Records Act.⁹ The new section, (11.4), would have added personal information obtained by local governments in the course of individuals “applying, inquiring into, or receiving local government services or inquiring into or participating in local government programs” to the list of public records exempted from disclosure.¹⁰ The Committee determined this language was too broad.¹¹ The language of the Bill was edited to add specific exclusions under section (11.2)(a) rather than add an entire new section under section (11).¹² The House

4. *Id.*

5. *Id.*

6. Ga. House Daily Composite Status Sheet, H.B. 171, Mar. 3, 2009 (Mar. 10, 2009), available at http://www.legis.state.ga.us/legis/2009_10/sum/hb171.htm [hereinafter *H.B. 171 Daily Status Sheet*].

7. *H.B. 171 Daily Status Sheet*, *supra* note 6, Jan. 28, 2009.

8. *H.B. 171 Daily Status Sheet*, *supra* note 6, Jan. 29, 2009.

9. Ga. Gen. Assem., H.B. 171, as introduced, available at http://www.legis.ga.gov/legis/2009_10/sum/hb171.htm (last visited Apr. 1, 2009) [hereinafter *H.B. 171 as introduced*]; see also *Georgia Open Records Act*, *supra* note 2.

10. *H.B. 171 as introduced*, *supra* note 9.

11. *GAC Meeting*, *supra* note 3.

12. Compare *H.B. 171 as introduced*, *supra* note 9 with H.B. 171

Governmental Affairs Committee favorably reported House Bill 171 on March 3, 2009.¹³ On March 5, 2009, Rep. Manning presented the Bill to the full House, reading the Bill for the third time.¹⁴ Rep. Manning explained that the Bill allows counties and cities to prevent parties from using the Georgia Open Records Act to obtain private information gathered in connection with neighborhood watch or public safety notification programs.¹⁵ It does not prevent police reports or accident reports from being obtained through the Georgia Open Records Act. No questions were asked about the Bill. The House passed House Bill 171 with 156 votes in favor and none opposed.¹⁶

The Senate read the Bill on March 9, 2009. Following the reading, the Senate referred the Bill to the Senate Committee on Government Oversight.¹⁷ The committee favorably reported the bill on March 26, 2009, and a second reading occurred in the Senate on that date. No further action on House Bill 171 occurred after that date.

PREPARED BY: Angela Thomas

HCS, available at http://www.legis.ga.gov/legis/2009_10/sum/hb171.htm.

13. *H.B. 171 Daily Status Sheet*, *supra* note 6, Mar. 3, 2009.

14. *H.B. 171 Daily Status Sheet*, *supra* note 6, Mar. 5, 2009.

15. Video Recording of House Proceedings (Mar. 5, 2009) (remarks by Rep. Judy Manning), available at http://www.georgia.gov/00/article/0,2086,4802_6107103_129987579,00.html (last visited Mar. 20, 2009).

16. *H.B. 171 Daily Status Sheet*, *supra* note 6, Mar. 5, 2009; Ga. H. Voting Record, H.B. 171, Mar. 5, 2009.

17. *H.B. 171 Daily Status Sheet*, *supra* note 6, Mar. 9, 2009.

**HOUSE BILL 273:¹ GEORGIA PRESCRIPTION MONITORING
ACT**
Creating O.C.G.A. § 16-13-120

FIRST SIGNATURE: Rep. Ron Stephens (164th).

CO-SPONSORS: Rep. Earl Carter (159th), Rep. Buddy Harden (147th), Rep. Butch Parrish (156th).

SUMMARY: House Bill 273 amends Chapter 13 of Title 16 of the Official Code of Georgia Annotated by adding a new article authorizing the implementation of a statewide electronic database system to monitor the prescribing and dispensing of certain controlled substances. Under the Bill, dispensers are required to submit information electronically including the patient's name, address, and date of birth. Additionally, House Bill 273 also requires that pharmacists and other licensed dispensers submit information pertaining to the type of drug prescribed as well as the frequency at which such prescriptions are made. The Bill provides that, once submitted, information contained in the database is exempt from disclosure under the Georgia Open Records Act.

STATUS: Not enacted during the 2009 session.

TEXT OF HOUSE BILL 273

§ 1.

Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled substances, is amended by adding a new article to read as follows:

“ARTICLE 6

16-13-120.

This article shall be known and may be cited as the ‘Georgia Prescription Monitoring Program Act.’

16-13-121.

This article is intended to improve the state's ability to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances or other licit drugs with potential for abuse while minimizing impact on pharmacy operations.

16-13-122.

As used in this article, the term:

1. H.B. 273, 150th Gen. Assem., Reg. Sess. (Ga. 2009).

- (1) 'Agency' means the Georgia Drugs and Narcotics Agency.
- (2) 'Board' means the Georgia State Board of Pharmacy.
- (3) 'Controlled substance' has the same meaning given such term in paragraph (4) of Code Section 16-13-21.
- (4) 'Dispenser' means a person that delivers a Schedule II, III, IV, or V controlled substance to the ultimate user but shall not include:
 - (A) A licensed pharmacy of a hospital that dispenses such substances for the purpose of inpatient or outpatient hospital care, a licensed pharmacy of a hospital or retail pharmacy of a hospital that dispenses prescriptions for controlled substances at the time of dismissal or discharge from such a facility, or a licensed pharmacy of a hospital or retail pharmacy of a hospital that dispenses such substances for long-term care patients or inpatient hospice facilities;
 - (B) An institutional pharmacy that serves only a health care facility, including, but not limited to, a nursing home, an intermediate care home, a personal care home, or a hospice program, which provides inpatient care and which pharmacy dispenses such substances to be administered and used by a patient on the premises of the facility;
 - (C) A practitioner or other authorized person who administers such a substance; or
 - (D) A pharmacy operated by, on behalf of, or under contract with the Department of Corrections for the sole and exclusive purpose of providing services in a secure environment to prisoners within a penal institution, penitentiary, prison, detention center, or other secure correctional institution. This shall include correctional institutions operated by private entities in this state which house inmates under the Department of Corrections.A hospital, clinic, or other health care facility may apply to the board for an exemption to be excluded from the definition of this term for purposes of compliance with this article if compliance would impose an undue hardship on such facility. The board shall provide guidelines and criteria for what constitutes an undue hardship which shall include criteria relating to the amount of indigent patients served and the lack of electronic capability of the facility.
- (5) 'Patient' means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.
- (6) 'Prescriber' means a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise authorized under the laws of this state to prescribe, distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.
- (7) 'Schedule II, III, IV, or V controlled substance' means a controlled substance that is classified as a Schedule II, III, IV, or V controlled substance under Code Section 16-13-26, 16-13-27, 16-13-28, or 16-13-29, respectively, or under the Federal Controlled Substances Act, 21 U.S.C. Section 812.16-13-123.
 - (a) The board and agency may apply for available grants and accept any gifts, grants, or donations to assist in developing and maintaining the program established by this article.
 - (b) The board shall be authorized to grant funds to dispensers for the purpose of covering costs for dedicated equipment and software for dispensers to use in complying with the reporting requirements of this article. Such grants shall be funded by gifts, grants, donations, or other funds appropriated for the operation of the prescription monitoring program established under the provisions of Code Section 16-13-124. The board shall be authorized to establish standards and specifications for any equipment and software purchased pursuant to a grant received pursuant to this article. Nothing in this article shall be construed to require a dispenser to incur costs to purchase equipment and software to comply with this article.16-13-124.
 - (a) The board shall establish and maintain a program for the monitoring of prescribing and dispensing of all Schedule II, III, IV, or V controlled substances.
 - (b) Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a Schedule II, III, IV, or V controlled substance. The information submitted for each prescription shall include, but not be limited to:
 - (1) United States Drug Enforcement Administration (DEA) permit number or approved dispenser facility identification number;
 - (2) Date prescription filled;
 - (3) Prescription number;
 - (4) Whether prescription is new or a refill;
 - (5) National Drug Code (NDC) for drug dispensed;

- (6) Quantity dispensed;
 - (7) Number of days' supply of the drug;
 - (8) Patient's name;
 - (9) Patient's address;
 - (10) Patient's date of birth;
 - (11) Approved prescriber identification number;
 - (12) Date prescription issued by prescriber; and
 - (13) Other data elements consistent with standards established by the American Society for Automation in Pharmacy, if designated by regulations of the board.
- (c) Each dispenser shall submit the information in accordance with transmission methods and frequency requirements established by the board but no less often than weekly and shall report, at a minimum, prescriptions dispensed up to the day prior to data submission.
- (d) The board may issue a waiver to a dispenser that is unable to submit prescription information by electronic means acceptable to the board. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required in subsection (b) of this Code section is submitted in this alternative format subject to the frequency requirements of subsection (c) of this Code section. Requests for waivers shall be submitted in writing.

16-13-125.

(a) Prescription information submitted to the board shall be confidential and shall not be subject to open records requirements, as contained in Article 4 of Chapter 18 of Title 50, except as provided in subsections (c) and (d) of this Code section.

(b) The board shall establish and maintain strict procedures to ensure that the privacy and confidentiality of patients and prescribers and patient and prescriber information collected, recorded, transmitted, and maintained pursuant to this article are protected. Such information shall not be disclosed to persons except as otherwise provided in this article and only in a manner which in no way would conflict with the requirements of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191. This may include, but not be limited to, restricting access only to those individuals and entities which clearly demonstrate a need to know such information.

(c) The board shall review the prescription information and if there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the board shall notify the appropriate law enforcement or professional licensing, certification, or regulatory agency or entity and shall provide prescription information to such agency or entity which may be necessary for an investigation.

(d) The board shall be authorized to provide data collected pursuant to this article to the following persons or under the following circumstances:

- (1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients;
- (2) Upon the request of a person about whom the information requested concerns or upon the request on his or her behalf by his or her attorney;
- (3) The Composite State Board of Medical Examiners or any licensing board whose practitioners have the authority to prescribe or dispense controlled substances;
- (4) Local, state, and federal law enforcement, regulatory, or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing licit drugs and who are involved in a bona fide, specific drug related investigation involving a designated case;
- (5) Upon the lawful order of a court of competent jurisdiction; and
- (6) Personnel of the agency for purposes of administration and enforcement of this article, Article 2 of this chapter, the 'Georgia Controlled Substances Act,' or any other applicable state law.

(e) The board may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify prescribers or individual patients or persons who received prescriptions from dispensers.

(f) The board may provide data to a prescription monitoring program of another state if the confidentiality, security, and privacy standards of the requesting state are determined by the board to be equivalent to those of the board.

(g) Any person who receives data or reports relating to this article from the board shall not provide such data or reports to any other person except by order of a court of competent jurisdiction or as otherwise permitted pursuant to this article.

16-13-126.

The agency shall be authorized to contract with another state agency or with a private vendor, as

necessary, to ensure the effective operation of the prescription monitoring program established pursuant to this article. Any contractor shall be bound to comply with the provisions regarding confidentiality of prescription information in Code Section 16-13-125 and shall be subject to the penalties specified in Code Section 16-13-130 for unlawful acts.

16-13-127.

The board shall provide notice and information to all prescribers and dispensers in this state as to the intent of this article, the program established pursuant to this article, and instructions on how to submit prescription information to the board via electronic means.

16-13-128.

(a) There is established a Prescription Monitoring Program Advisory Committee for the purposes of consulting with and advising the board and the agency on matters related to the establishment, maintenance, and operation of the prescription monitoring program established pursuant to this article. This shall include, but not be limited to, data collection, regulation of access to data, evaluation of data to identify benefits and outcomes of the program, communication to prescribers and dispensers as to the intent of the program and

how to use the data base, and security of data collected.

(b) The advisory committee shall consist of five members, appointed by the board, which may include individuals representing pharmacies, dentistry, and medical professionals. The board shall be authorized, but not required, to make such appointments from

recommendations submitted by the Medical Association of Georgia, the Georgia Dental Association, the Georgia Pharmacy Association, and the Georgia Society of Health System Pharmacies. Each member of the advisory committee shall serve a two-year term and until

the appointment and qualification of such member's successor.

(c) The advisory committee shall elect a chairperson and vice chairperson from among its membership to serve a term of one year.

(d) The advisory committee shall meet at the call of the chairperson or upon request by at least three of the members and shall meet at least one time per year. Three members of the committee shall constitute a quorum.

(e) The members shall receive no compensation or reimbursement of expenses from the state for their services as members of the advisory committee.

16-13-129.

The board shall promulgate rules and regulations setting forth the procedures and methods for implementing this article.

16-13-130.

(a) A dispenser who willfully and intentionally fails to submit prescription monitoring information to the board as required by this article or willfully and intentionally submits incorrect prescription information shall be guilty of a misdemeanor and punished by imprisonment for a period not to exceed 12 months or a fine not to exceed \$1,000.00, or both.

(b) An individual authorized to have prescription monitoring information pursuant to this article who willfully and intentionally discloses such information in violation of this article shall be guilty of a felony and punished by imprisonment for a period not to exceed ten years or a fine not to exceed \$10,000.00, or both.

(c) An individual authorized to have prescription monitoring information pursuant to this article who willfully and intentionally uses such information in a manner or for a purpose in violation of this article shall be guilty of a felony and punished by imprisonment for a period not to exceed ten years or a fine not to exceed \$10,000.00, or both.

(d) The penalties provided by this Code section are intended to be cumulative of other penalties which may be applicable and are not intended to repeal such other penalties.

16-13-131.

Nothing in this article shall require a dispenser or prescriber to obtain information about a patient from the prescription monitoring program established pursuant to this article. A dispenser or prescriber shall not have a duty and shall not be held liable for damages to any person in any civil, criminal, or administrative action for injury, death, or loss to person or property on the basis that the dispenser or prescriber did or did not seek or obtain information from the prescription monitoring program. A dispenser or prescriber acting in good faith shall be immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving information from the prescription monitoring program.

§2

This Act shall become effective on July 1, 2009.

§3

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

FIRST SIGNATURE'S RATIONALE

Rep. Ron Stephens, of the 164th district, introduced House Bill 273 in response to the 2007 death of Chris Benoit, a professional wrestler and steroid user who killed his wife, his 7 year-old son, and then himself.² While there is no evidence that steroids played a role in the murder-suicide, the doctor who prescribed steroids to Benoit was subsequently charged with illegally dispensing drugs and pleaded guilty.³

House Bill 273 is an effort to prevent illegal drug abuse and related deaths.⁴ The Bill is also designed to help eliminate drug shopping, the negative impact on families and the endangerment of others posed by drug abusers.⁵ The scope of House Bill 273 is limited in the sense that the Bill would only apply to prescriptions for lawful drugs that have a potential for abuse.⁶ House Bill 273 also limits public access to any private information collected by the state. While House Bill 273 is primarily directed towards private practitioners, the Bill provides an exemption for entities such as nursing homes and hospitals.⁷ According to Rep. Stephens, the rationale behind this exemption is that the possibility of abusing drugs through these avenues is unlikely given that nursing homes and hospitals already have preventive measures in place to regulate the prescription of licit drugs. During the time that House Bill 273

2. Telephone Interview with Rep. Ron Stephens, H. Dist. No. 164 (Nov. 14, 2008) [hereinafter *Stephens Interview*].

3. See Andria Simmons, *Late Wrestler's Doctor to Change Plea in Drug Case*, ATLANTA J. CONST., Jan. 17, 2009, available at http://www.ajc.com/metro/content/metro/stories/2009/01/17/wrestlerdead_0117.html (last visited Mar. 30, 2009); Ben Smith, *Pro Wrestler's Doctor Changes Plea to Guilty*, ATLANTA J. CONST., Jan. 29, 2009, available at http://www.ajc.com/news/content/metro/stories/2009/01/29/astin_steroids_plea.html%3Fcxntlid%3Dinform_artr (last visited Mar. 30, 2009).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

has been under review, the American Cancer Society has expressed an interest in amending the Bill to insure that the Bill will not prohibit people from getting their prescriptions on time.

While the Georgia Drugs and Narcotics Agency already has legal authority to access individuals' private information if it suspects drug abuse, the existing process is largely manual and paper-based. House Bill 273 streamlines this process by authorizing the use of a statewide electronic database to replace the current paper-based procedure.⁸

LEGISLATIVE GENEALOGY

The first reading of the Bill in the House occurred on February 3, 2009, and the House assigned the Bill to the House Health and Human Services Committee.⁹ On February 4, 2009, the Bill was read for the second time.¹⁰ No further action occurred on House Bill 273 during the 2009 legislative session.¹¹

PREPARED BY: Cherri L. Shelton

8. See Andria Simmons, *Late Wrestler's Doctor to Change Plea in Drug Case*, ATLANTA J. CONST., Jan. 17, 2009, available at http://www.ajc.com/metro/content/metro/stories/2009/01/17/wrestlerdead_0117.html (last visited Mar. 30, 2009).

9. Ga. House Daily Composite Status Sheet, H.B. 273, Feb. 3, 2009 (Mar. 9, 2009).

10. Ga. House Daily Composite Status Sheet, H.B. 273, Feb. 4, 2009 (Mar. 9, 2009).

11. . Ga. Gen. Assem., H.B. 273, available at http://www.legis.ga.gov/legis/2009_10/sum/hb273.htm (last visited Apr. 5, 2009).

HOUSE BILL 388:¹ THE OPTION OF ADOPTION ACT
Creating O.C.G.A. § 19-8-40 et seq. and Amending
O.C.G.A. § 15-11-28,
O.C.G.A. § 19-8-26, O.C.G.A. § 29-2-22 and O.C.G.A. § 49-
5-12

FIRST SIGNATURE: Rep. James Mills (25th).

CO-SPONSORS: Rep. Melvin Everson (106th), Rep. Jerry Keen (179th), Rep. Ben Harbin (118th), Rep. Len Walker (107th) and Rep. Ed Setzler (35th).

SUMMARY: House Bill 388 is also known as the “Option of Adoption Act.” This bill seeks to amend Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoption, by creating the “Option of Adoption Act”. House Bill 388 provides that a legal custodian of an embryo may relinquish rights to that embryo. The Bill also provides that a child born as a result of such relinquished embryo shall be the legal child of the recipient of the embryo and provides for an expedited order of parentage. Additionally, House Bill 388 seeks to amend the Official Code of Georgia so as to ensure consistency with the provisions of this Bill.

STATUS: Passed the Senate and House.

TEXT OF HOUSE BILL 388

§ 1.

This Act shall be known and may be cited as the “Option of Adoption Act.”

§ 2.

Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to adoption, is amended by designating the existing chapter as Article 1 and adding a new article to read as follows:

“ARTICLE 2

19-8-40.

As used in this article, the term:

(1) ‘Embryo’ or ‘human embryo’ means an individual fertilized ovum of the human species from the single-cell stage to eight-week development.

1. H.B. 388, 150th Gen. Assem., Reg. Sess. (Ga. 2009).

(2) 'Embryo relinquishment' or 'legal transfer of rights to an embryo' means the relinquishment of rights and responsibilities by the person or persons who hold the legal rights and responsibilities for an embryo and the acceptance of such rights and responsibilities by a recipient intended parent.

(3) 'Embryo transfer' means the medical procedure of physically placing an embryo into the uterus of a female.

(4) 'Legal embryo custodian' means the person or persons who hold the legal rights and responsibilities for a human embryo and who relinquishes said embryo to another person or persons.

(5) 'Recipient intended parent' means a person or persons who receive a relinquished embryo and who accepts full legal rights and responsibilities for such embryo and any child that may be born as a result of embryo transfer.

19-8-41.

(a) A legal embryo custodian may relinquish all rights and responsibilities for an embryo to a recipient intended parent prior to embryo transfer. A written contract shall be entered into between each legal embryo custodian and each recipient intended parent prior to embryo transfer for the legal transfer of rights to an embryo and to any child that may result from the embryo transfer. The contract shall be signed by each legal embryo custodian for such embryo and by each recipient intended parent in the presence of a notary public and a witness. Initials or other designations may be used if the parties desire anonymity. The contract may include a written waiver by the legal embryo custodian of notice and service in any legal adoption or other parentage proceeding which may follow.

(b) If the embryo was created using donor gametes, the sperm or oocyte donors who irrevocably relinquished their rights in connection with in vitro fertilization shall not be entitled to any notice of the embryo relinquishment, nor shall their consent to the embryo relinquishment be required.

(c) Upon embryo relinquishment by each legal embryo custodian pursuant to subsection (a) of this Code section, the legal transfer of rights to an embryo shall be considered complete, and the embryo transfer shall be authorized.

(d) A child born to a recipient intended parent as the result of embryo relinquishment pursuant to subsection (a) of this Code section shall be presumed to be the legal child of the recipient intended parent; provided that each legal embryo custodian and each recipient intended parent has entered into a written contract.

19-8-42.

(a) Prior to the birth of a child or following the birth of a child, a recipient intended parent may petition the superior court for an expedited order of adoption or parentage. In such cases, the written contract between each legal embryo custodian and each recipient intended parent shall be acceptable in lieu of a surrender of rights.

(b) All petitions under this article shall be filed in the county in which any petitioner or any respondent resides.

(c) The court shall give effect to any written waiver of notice and service in the legal proceeding for adoption or parentage.

(d) In the interest of justice, to promote the stability of embryo transfers, and to promote the interests of children who may be born following such embryo transfers, the court in its discretion may waive such technical requirements as the court deems just and proper.

19-8-43.

Upon a filing of a petition for adoption or parentage and the court finding that such petition meets the criteria required by this article, an expedited order of adoption or parentage shall be issued and shall be a final order. Such order shall terminate any future parental rights and responsibilities of any past or present legal embryo custodian or gamete donor in a child which results from the embryo transfer and shall vest such rights and responsibilities in the recipient intended parent."

§ 3.

Code Section 15-11-28 of the Official Code of Georgia Annotated, relating to jurisdiction of the juvenile court, is amended by revising subparagraph (a)(2)(C) as follows:

"(C) For the termination of the legal parent-child relationship and the rights of the biological father who is not the legal father of the child, other than that in connection with adoption proceedings under Article 1 of Chapter 8 of Title 19, in which the superior courts shall have concurrent jurisdiction to terminate the legal parent-child relationship and the rights of the biological father who is not the legal father of the child;"

§ 4.

Code Section 19-8-26 of the Official Code of Georgia Annotated, relating to how surrender of parental

rights is executed, is amended by revising subsection (c) as follows:

“(c) The surrender of rights by a parent or guardian pursuant to paragraph (1) of subsection (e) of Code Section 19-8-5 shall conform substantially to the following form:

SURRENDER OF RIGHTS

FINAL RELEASE FOR ADOPTION

NOTICE TO PARENT OR GUARDIAN:

This is an important legal document and by signing it you are surrendering all of your right, title, and claim to the child identified herein, so as to facilitate the child’s placement for adoption. You are to receive a copy of this document and as explained below have the right to withdraw your surrender within ten days from the date you sign it.

I, the undersigned, being solicitous that my (male) (female) child, born (insert name of child), on (insert birthdate of child), should receive the benefits and advantages of a good home, to the end that (she) (he) may be fitted for the requirements of life, consent to this surrender.

I, the undersigned, (insert relationship to child) of the aforesaid child, do hereby surrender the child to (insert name, surname not required, of each person to whom surrender is made), PROVIDED each such person is named as petitioner in a petition for adoption of the child filed in accordance with Article 1 of Chapter 8 of Title 19 of the Official Code of Georgia Annotated within 60 days from the date hereof. Furthermore, I promise not to interfere in the management of the child in any respect whatever; and, in consideration of the benefits guaranteed by (insert name, surname not required, of each person to whom surrender is made) in thus providing for the child, I do relinquish all right, title, and claim to the child herein named, it being my wish, intent, and purpose to relinquish absolutely all parental control over the child.

It is also my wish, intent, and purpose that if each such person is not named as petitioner in a petition for adoption as provided for above within the 60 day period, other than for excusable neglect, or, if said petition for adoption is filed within 60 days but the adoption action is dismissed with prejudice or otherwise concluded without an order declaring the child to be the adopted child of each such person, then I do hereby surrender the child as follows:

(Mark one of the following as chosen)

I wish the child returned to me, and I expressly acknowledge that this provision applies only to the limited circumstance that the child is not adopted by the person or persons designated herein and further that this provision does not impair the validity, absolute finality, or totality of this surrender under any circumstance other than the failure of the designated person or persons to adopt the child and that no other provision of this surrender impairs the validity, absolute finality, or totality of this surrender once the revocation period has elapsed; or

I surrender the child to (insert name of designated licensed child-placing agency), a licensed child-placing agency, for placement for adoption; or

I surrender the child to the Department of Human Resources, as provided by subsection (k) of Code Section 19-8-5, for placement for adoption; and (insert name of designated licensed child-placing agency) or the Department of Human Resources may petition the superior court for custody of the child in accordance with the terms of this surrender.

Furthermore, I hereby agree that the child is to be adopted either by each person named above or by any other such person as may be chosen by the (insert name of designated licensed child-placing agency) or the Department of Human Resources and I do expressly waive any other notice or service in any of the legal proceedings for the adoption of the child.

Furthermore, I understand that under Georgia law an agent appointed by the court is required to conduct an investigation and render a report to the court in connection with the legal proceeding for the legal adoption of the child and I hereby agree to cooperate fully with such agent in the conduct of this investigation.

Furthermore, I hereby certify that I have received a copy of this document and that I understand I may only withdraw this surrender by giving written notice, delivered in person or mailed by registered mail or statutory overnight delivery, to (insert name and address of agent of each person to whom surrender is made) within ten days from the date hereof; that the ten days shall be counted consecutively beginning with the day immediately following the date hereof; however, if the tenth day falls on a Saturday, Sunday, or legal holiday then the last day on which the surrender may be withdrawn shall be the next day that is not a Saturday, Sunday, or legal holiday; and I understand that it may NOT be withdrawn thereafter.

Furthermore, I hereby certify that I have not been subjected to any duress or undue pressure in the execution of this surrender document and do so freely and voluntarily.

No. 1]

2009 Legislative Initiatives

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Witness my hand and seal this _____ day of _____, ____.

(SEAL)
(Parent or guardian)

Unofficial witness
Sworn to and subscribed
before me this _____
day of _____, ____.

Notary public (SEAL)
My commission expires _____.”

§ 5.

Code Section 29-2-22 of the Official Code of Georgia Annotated, relating to authority of a guardian, is amended by revising paragraph (4) of subsection (a) as follows:

“(4) Execute a surrender of rights to enable the adoption of the minor pursuant to the provisions of Article 1 of Chapter 8 of Title 19 or the adoption laws of any other state; and”

§ 6.

Code Section 49-5-12 of the Official Code of Georgia Annotated, relating to licensing and inspection of child welfare agencies, is amended by revising paragraphs (1) and (2) of subsection (q) as follows:

“(1) Adopt a child or children from receiving or accepting a child or children in the individual’s home in anticipation of filing a petition for adoption under Article 1 of Chapter 8 of Title 19; or
(2) Have that individual’s child or children placed for adoption from placing that individual’s child or children in the home of an individual who is not related to the child or children in anticipation of the individual’s initiation of adoption proceedings pursuant to Article 1 of Chapter 8 of Title 19.”

§ 7.

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

FIRST SIGNATURE’S RATIONALE

Rep. James Mills, of the 25th district, introduced the embryo adoption measure, House Bill 388, to address the 20,000 or more frozen embryos in Georgia that donors have no intention of using.² Rep. Mills stated, “I do not believe that an embryo, especially a frozen embryo, should be compared to a Popsicle or an ice cube in the refrigerator. . . . I believe there are two different values. Clearly you cannot adopt a Popsicle. I think there should be a mechanism by which you can adopt an embryo.”³

Rep. Mills, the Bill’s author, presented the Option of Adoption Act as a safeguard against an embryo donor who may later claim the child born from that embryo.⁴ He stated:

2. Walter C. Jones, *Embryo Bills Look at Legal Limitations*, AUGUSTA CHRON. Mar. 4, 2009, http://chronicle.augusta.com/stories/2009/03/04/met_513488.shtml (last visited Apr. 5, 2009) (statement by Rep. James Mills).

3. *Id.*

4. Audrey Barrick, *Ga. House Passes Nation’s First Embryo Adoption Bill*, THE CHRISTIAN POST, Apr. 4, 2009, <http://christianpost.com/Society/>

Under Georgia's current laws, a woman could implant an embryo and carry it to term, only to have the biological parents reassert their parental rights when she goes into labor. That's not fair, and it's a risk that most people are unwilling to take. The Option of Adoption Act would fix that problem and protect a woman's parental right should she choose to adopt and implant an embryo.⁵

According to the language of House Bill 388, an embryo should be afforded "rights and responsibilities" that are owed to it under Georgia Law. An embryo is no longer treated as being "donated" by its genetic parent.⁶ Rep. Mills stated that "gametes, cars, old clothes and other property are 'donated,' not children. . .they are adopted."⁷ House Bill 388 also clarifies that an embryo's life begins from fertilization at "a single-celled" stage to eight week development.⁸ One of the major effects of this legislation is that the term "legal embryo custodian" would replace "embryo donor" throughout the proposed code section dealing with embryo adoption.⁹

Rep. Mills also addressed what this resolution seeks to provide to families.¹⁰ "Human embryo adoption is a great way to give infertile couple[s] another option in their quest to become parents. I hope that this legislation gives them the confidence to choose this form of adoption."¹¹

Ethics_rights/2009/04/ga-house-passes-nation-s-first-embryo-adoption-bill-04/index.html (last visited Apr. 5, 2009).

5. *House Passes Option for Adoption Act*, available at <http://theboiledpeanut.com/wordpress/?p=1201> (last visited Apr. 5, 2009) (statement made by Rep. James Mills) (hereinafter "*House Passes Option for Adoption Act*").

6. Daniel Becker, *Georgia Passes First Adoption Law*, THE VOICE MAGAZINE.COM, available at <http://www.thevoicemagazine.com/headline-news/525-georgia-passes-nations-first-embryo-adoption-law.html>.

7. *Id.*

8. *Id.*

9. *Id.*

10. *House Passes Option for Adoption Act*, available at <http://theboiledpeanut.com/wordpress/?p=1201> (statement by Rep. James Mills) (hereinafter "*House Passes Option for Adoption Act*").

11. *Id.*

LEGISLATIVE GENEALOGY

Rep. James Mills, of the 25th district, proposed House Bill 388 as the Option for Adoption Act.¹² The first reading of House Bill 388 occurred on February 11, 2009, and the second reading in the House occurred on February 12, 2009.¹³ On March 9, 2009, the House Judiciary Committee favorably reported House Bill 388.¹⁴ On March 12, 2009, the third House reading occurred.¹⁵ On that same day, the House passed House Bill 388, and the Senate read and referred the Bill.¹⁶

House Bill 388, providing for the adoption of embryos by defining them as a “child”, would be the nation’s first embryo adoption legislation.¹⁷ The Option of Adoption Act would provide procedures for embryo adoption so that the genetic donors can relinquish their rights to embryos before birth.¹⁸ Once the genetic donors have signed a written surrender of parental rights, an embryo could be transferred to its adoptive parents according to Georgia adoption laws.¹⁹ This Bill also ensures that the adoption of human embryos will not be analyzed by the courts under the guise of contract or property law.²⁰ House Bill 388 helps to clarify the rights of genetic and adoptive parents.²¹

House Bill 388 would change Georgia law by adding “human embryo” to the definition of “child.”²² This bill provides further explanations regarding the legal status of embryos for the

12. Ga. Gen. Assem., H.B. 388, *available at* http://www.legis.state.ga.us/legis/2009_10/sum/hb388.htm (last visited Apr. 5, 2009).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *House Passes Option for Adoption Act, supra note 5.*

18. *Id.*

19. *Id.*

20. *Georgia House Passes HB 388: Nation’s First Embryo Adoption Bill, available at* <http://www.christiannewswire.com/news/380319719.html>.

21. *Id.*

22. Ga. Gen. Assem., H.B. 388, *available at* http://www.legis.state.ga.us/legis/2009_10/versions/hb388_Sen_ctee_sub_L_C_29_3869S_7.htm (last visited Apr. 5, 2009).

purposes of adoption.²³ Some notable definitions found in the version of House Bill 388 offered by the Senate Judiciary Committee are as follows: (1) defining “embryo” or “human embryo” as an individual fertilized ovum of the human species, from fertilization to eight week development; (2) defining “embryo transfer” as to mean the relinquishment of rights and responsibilities by the genetic parent or parents or gamete donor of a human embryo and the acceptance of said rights and responsibilities by the adopting parent or parents; (3) the relinquishment of rights of a human embryo by genetic parents shall take place before implantation; (4) a written surrender of rights shall be obtained from the genetic mother and father unless the embryo was derived from donor gametes; and (5) a taxpayer shall not be allowed an exemption for a dependent as a deduction in computing Georgia taxable income until and unless such human embryo is born.²⁴

Both houses amended House Bill 388 before passing the Bill.²⁵ As initially proposed, Section 2 of the Bill addressed only the general intent of the legislation regarding the adoption of embryos.²⁶ That version of Section 2 stated, “The General Assembly’s purpose in enacting this Act is to clarify the rights of genetic and adoptive parents, to apply established procedures in adoption law to embryo adoption, to clarify the legal status of children placed for adoption as embryos, and to promote the best interests of the child.”²⁷ The statement of general intent was removed, and the version of Section 2 of House Bill 388 which passed outlines with specificity how the Bill will amend the existing code as it relates to adoption law because it seeks to designate the existing code on adoption as “Article 1” and add a new “Article 2” to deal with embryo adoption.²⁸ Because a new article was proposed to be added to Chapter 8 of Title 19, several provisions were added to clarify references to the existing Chapter 8 of Title 19 by adding “Article 1” before

23. *Id.*

24. *Id.*

25. *Id.*

26. Ga. Gen. Assem., H.B. 388, available at http://www.legis.state.ga.us/legis/2009_10/versions/hb388_LC_37_0843_a_2.htm (last visited Apr. 5, 2009).

27. *Id.*

28. *Id.*

those references.

The most notable changes between the original version and the version of House Bill 388 which both houses passed were regarding the level of specificity to the existing code.²⁹ The current version provides more detail by addressing each area of current law that will need to be amended to accommodate the legal adoption of an embryo.³⁰ Unlike the proposed version of the bill, the current version of House Bill 388 includes a “Surrender of Rights Final Release for Adoption Notice to Parent or Guardian” form.³¹

On March 12, 2009, the House passed House Bill 388 by a vote of 96 to 66 that fell mostly, but not entirely, along party lines.³² Most Republicans voted for the Bill, and most Democrats voted against it.³³ Some opponents characterized the bill as a back door attempt to outlaw abortion.³⁴ In addition, Rep. Bobby Franklin, of the 43rd district, argued that the bill amounts “to openly trafficking (embryonic) humans to the adoption market.”³⁵ Rep. Mike Jacobs, of the 80th district, a co-sponsor of the Bill, responded to both arguments.³⁶ “There is no hidden agenda here,” said Rep. Jacobs, “this is a good pro-family bill.”³⁷

On March 12, 2009, the third House reading occurred.³⁸ On the same day the House passed House Bill 388 and the Senate read and referred the Bill.³⁹ On March 30, 2009, the Senate Committee favorably reported on the Bill, and the second senate

29. *Id.*

30. *Id.*

31. *Id.*

32. Ga. Gen. Assem., H.B. 388 available at http://www.legis.state.ga.us/legis/2009_10/sum/hb388.htm; see also Smith, *supra* note 4.

33. *Id.* Shouldn't use id here with two sources above.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. Ga. Gen. Assem., H.B. 388, available at http://www.legis.state.ga.us/legis/2009_10/fulltext/hb388.htm (last visited Apr. 5, 2009).

39. *Id.*

reading occurred.⁴⁰ On April 1, 2009, the third Senate reading occurred, and the senate passed the Bill with a senate committee amendment.⁴¹ On April 3, 2009, the House agreed to the Senate amendment to Section 2 of the proposed Bill under the proposed addition of Article 2 to O.C.G.A. § 19-8-43.⁴² The previous language included only “past and present legal custodian”, whereas in the senate committee substitute the term “or gamete donor”⁴³ has been added.⁴⁴

PREPARED BY: Aimee Faight

40. *Id.*

41. *Id.*

42. *Id.*

43. *Available*

at
<http://www.medterms.com/script/main/art.asp?articlekey=3540> (Gamete: The sperm or the egg. Each human gamete normally has 23 chromosomes, the haploid number of chromosomes, half the number of chromosomes contained in most types of cells in the body).

44. Ga. Gen. Assem., H.B. 388, *available at*
http://www.legis.state.ga.us/legis/2009_10/sum/hb388.htm.

**SENATE BILL 64:¹ HIV TESTING OF INCARCERATED
INDIVIDUALS PRIOR TO RELEASE**
Creating O.C.G.A. § 42-5-52.2

FIRST SIGNATURE: Sen. Kasim Reed (35th).

CO-SPONSORS: Sen. Renee Unterman (45th), Sen. Gloria Butler (55th), Sen. Freddie Sims (12th), Sen. Horacena Tate (38th) and Sen. Valencia Seay (34th).

SUMMARY: Senate Bill 64 mandates HIV testing for inmates prior to their release if they have been incarcerated for at least one year and have not previously tested positive for HIV. The bill also requires the state to provide information to those who test HIV positive regarding living with HIV after their release.

STATUS: Passed the Senate and the House.

TEXT OF SENATE BILL 64

§ 1.

Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to conditions of detention generally, is amended by adding a new Code section to read as follows:

“42-5-52.2.

(a) For purposes of this Code section, ‘HIV’ means HIV as defined by Code Section 31-22-9.1.

(b) The department shall implement an HIV testing program whereby any state inmate who has been in the custody of a state penal institution for one year or longer and who has not previously tested positive for HIV shall be tested for HIV within 30 days prior to his or her expected date of release from the custody of the department.

(c) Each person tested as provided in subsection (b) of this Code section shall be notified by the department in writing of the results of such testing prior to his or her release. Prior to the release of any person testing positive for HIV, the appropriate information as required by Code Sections 24-9-47 and 31-22-9.2 or other law shall be provided by the department to the Department of Human Resources. Prior to the release of any person testing positive for HIV, the department shall also provide to such person in writing contact information regarding medical, educational, and counseling services available through the Department of Human Resources. Any person testing positive for HIV shall be provided instruction relating to living with HIV, the prevention of the spread of such virus, and the legal consequences of infecting unknowing partners.

(d) The department shall seek state and federal grants or other possible sources of revenue for the purpose of funding a program of HIV testing authorized by this Code section. In addition, the department is authorized to accept gifts, subject to the approval of the board, for the purpose of funding such program.

(e) The department shall consolidate inmates who have tested positive for HIV in a manner that most

1. S.B. 64, 150th Gen. Assem., Reg. Sess. (Ga. 2009).

efficiently provides education, counseling, and treatment for such persons.

(f) The provisions of this Code section shall not be construed to limit the provision for HIV testing in Code Section 42-9-42.1.”

§ 2.

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

FIRST SIGNATURE’S RATIONALE

Sen. Kasim Reed, of the 35th district, introduced Senate Bill 64 to provide notice to inmates infected with HIV prior to their discharge from the state’s penal institutions.² Although Georgia requires individuals to be HIV tested upon committal to a penal institution, there is no corresponding requirement for testing inmates prior to their release to provide notice to those inmates who contracted HIV during incarceration.³ The Senator was motivated by the concern that many individuals leave Georgia’s penal institutions unaware of the fact that they are HIV positive, and after their release, unknowingly infect their partners with the virus.⁴ The Senator’s hope was that, provided with

2. Telephone Interview with Kindra Baer, Legislative Aid for Sen. Reed, S. District No. 35 (Feb. 6, 2009) [hereinafter *Baer Interview, 2/6/09*]; see also Video Recording of State Institutions and Property (House) Comm. Meeting, Mar. 23, 2009 (remarks by Sen. Kasim Reed), available at http://www.legis.state.ga.us/legis/2009_10/house/Committees/stateInstitution/s/sipArchives.htm (last visited Apr. 4, 2009) [hereinafter *Video Recording of House Committee 3/23/09*].

3. See O.C.G.A. § 42-5-52.1 (2008) (regarding testing of inmates when initially incarcerated). This section authorizes the Commissioner to apply to the superior court for an order authorizing the use of reasonably necessary measures to require submission to the HIV test for any inmate who refuses to cooperate with the HIV test under that code section. By contrast, Senate Bill 64 is silent on what procedures would be implemented in the event an inmate refused to submit to the test; likewise, the Bill does not describe the type of test to be utilized (e.g. oral fluid or blood). Additionally, O.C.G.A. § 42-9-42.1 (2008) authorizes the Parole Board to require inmates to submit to HIV testing (or obtain results from a previously administered test) and to consider the result as a factor in determining whether to grant clemency, a pardon, parole or other relief to the inmate. However, the test result may not be the sole basis for determining whether to grant or deny such relief. Furthermore, the Board is authorized to impose conditions upon any person granted such relief who is determined to be HIV positive; these conditions may include those implemented to prevent the spread of HIV by the person granted such relief.

4. *Baer Interview, 2/6/09, supra* note 2; see also *Video Recording of*

knowledge of their condition and counseling, infected individuals would not pass the virus on to their partners.⁵

LEGISLATIVE GENEALOGY

The first reading of Senate Bill 64 occurred on January 29, 2009, and the Senate referred the Bill to the State Institutions and Property Committee.⁶ The Committee amended the bill, dictating that the testing would not be implemented until the General Assembly appropriated money for it, or the Department of Corrections obtained funding from other sources.⁷ On March 3, 2009, the Committee favorably reported the Bill to the Senate, and it was read a second time on March 4, 2009.⁸ On March 10, 2009, the third reading of the Bill occurred, and the Senate approved the Committee substitute by a vote of 41-7.⁹

The Bill received its first reading in the House on March 12, 2009 and its second reading on March 17, 2009.¹⁰ The House Committee on State Institutions and Property amended the bill

House Committee 3/23/09, supra note 2 (remarks by Sen. Kasim Reed).

5. *Id.*; see also Press Release, *Sen. Reed's Bill to Combat HIV Passes Committee*, Georgia Senate Press Office, Mar. 5, 2009, available at <http://senate-press.com/sen-reed%e2%80%99s-bill-to-combat-hiv-passes-committee.html> (last visited Mar. 11, 2009).

6. Ga. Senate Daily Composite Status Sheet, S.B. 64, Jan. 29, 2009 (Apr. 1, 2009), available at http://www.legis.ga.gov/legis/2009_10/composite/SComposite.pdf [hereinafter *S.B. 64 Daily Status Sheet*].

7. See Ga. Gen. Assem., S.B. 64, SCS available at http://www.legis.ga.gov/legis/2009_10/versions/sb64_Committee_sub_LC_35_1369S_4.htm (last visited Apr. 9, 2009) [hereinafter *S.B. 64 SCS*]; Telephone Interview with Kindra Baer, Legislative Aid for Sen. Reed, S. District No. 35 (Mar. 6, 2009); see also Zornes, Carl, *Senate Passes Bill Requiring HIV Testing in Prisons*, Georgia Public Broadcasting News, Mar. 10, 2009, available at <http://gpbnews.blogspot.com/2009/03/senate-passes-bill-requiring-hiv.html> (last visited Mar. 11, 2009) (stating that the tests, which cost approximately \$4.00 each, would not be required unless the state decided to fund them).

8. *S.B. 64 Daily Status Sheet, supra note 6, Mar. 3-4, 2009 (Apr. 1, 2009).*

9. *S.B. 64 Daily Status Sheet, supra note 6, Mar. 10, 2009 (Apr. 1, 2009); Ga. S. Voting Record, S.B. 64, Mar. 10, 2009.*

10. *S.B. 64 Daily Status Sheet, supra note 6, Mar. 12 & 17, 2009 (Apr. 1, 2009).*

to include the legal definition of HIV.¹¹ Also, the House Committee decreased the timeframe that the HIV testing would be conducted from between 60 and 120 days to 30 days prior to the expected date of release.¹² This change was made in order to give the Department of Corrections more flexibility in administering the tests, while simultaneously insuring that the tests would be given as close to the release date as possible.¹³ Additionally, the Committee amended the Bill to direct the Department of Corrections to notify the Department of Human Resources prior to the release of an inmate who tested positive for HIV.¹⁴ Also, the Bill requires the Department of Corrections to inform, in writing, HIV positive inmates about educational, counseling and medical services available through the Department of Human Resources, through which HIV positive inmates can be instructed on living with HIV, prevention of spreading the disease, as well as the legal consequences of infecting unknowing partners.¹⁵ The amended Bill also instructs the Department of Corrections to consolidate inmates who tested positive in a manner that would provide for the most efficient counseling, education and treatment.¹⁶ Finally, the House Committee placed on the Department of Corrections an affirmative duty to seek sources of revenue, including federal grants, state grants and gifts, in order to fund the HIV testing program under this code section.¹⁷ The Committee favorably reported the House substitute Bill on March 25, 2009.¹⁸ On April 1, 2009, the House postponed consideration of the Bill

11. S.B. 64, HSS, available at http://www.legis.ga.gov/legis/2009_10/versions/sb64_LC_35_1499S_hss_7.htm (last visited Apr. 4, 2009) [hereinafter *S.B. 64 HSS*]; See O.C.G.A. § 31-22-9.1 (2008).

12. Compare *S.B. 64 SCS*, *supra* note 7 with *S.B. 64 HSS*, *supra* note 11.

13. *Video Recording of House Committee 3/23/09*, *supra* note 2 (remarks by Committee members and Alan Adams, Director of the Office of Health Services, Georgia Department of Corrections).

14. Compare *S.B. 64 SCS*, *supra* note 7 with *S.B. 64 HSS*, *supra* note 11; see O.C.G.A. § 24-9-47 (2008) (regarding disclosure of AIDS confidential information); O.C.G.A. § 31-22-9.2 (2008) (regarding report of positive HIV tests by health care providers).

15. Compare *S.B. 64 SCS*, *supra* note 7 with *S.B. 64 HSS*, *supra* note 11.

16. *Id.*

17. *Id.*

18. *S.B. 64 Daily Status Sheet*, *supra* note 6, Mar. 25, 2009 (Apr. 1, 2009).

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until April 3, 2009, when it was read for the third time.¹⁹ The House passed the bill on April 3, 2009 by a vote of 163 to 4.²⁰ The Senate voted to adopt the House substitute on April 3, 2009 by a vote of 46 to 3.²¹

PREPARED BY: Tanya McAdams

19. *S.B. 64 Daily Status Sheet*, *supra* note 6, Apr. 1 & 3, 2009 (Apr. 3, 2009).

20. *S.B. 64 Daily Status Sheet*, *supra* note 6, Apr. 3, 2009 (Apr. 3, 2009); Ga. H. Voting Record, S.B. 64, Apr. 3, 2009.

21. *S.B. 64 Daily Status Sheet*, *supra* note 6, Apr. 3, 2009 (Apr. 3, 2009); Ga. S. Voting Record, S.B. 64, Apr. 3, 2009.

**SENATE BILL 124:¹ NEW EXCEPTION TO OPEN RECORDS
ACT**
Amending O.C.G.A. § 50-18-72

FIRST SIGNATURE: Sen. Bill Heath (31st).

CO-SPONSORS: Sen. Jim Butterworth (50th), Sen. Cecil Staton (18th), Sen. Jack Murphy (27th) and Sen. Bill Jackson (24th).

SUMMARY: O.C.G.A. § 50-18-72 currently provides in part that social security numbers must be redacted from public records subject to disclosure under the Georgia Open Records Act, unless the party requesting the record is with the news media. Senate Bill 124 would remove this exception for the news media, ending their ability to obtain social security numbers through Georgia Open Records Act requests.

STATUS: Not enacted during the 2009 session.

TEXT OF SENATE BILL 124

§ 1.

Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure is not required and disclosure of exempting legal authority, is amended by revising paragraph (11.1) of subsection (a) as follows:

“(11.1) An individual’s social security number and insurance or medical information in personnel records, which ~~may~~ shall be redacted from such records prior to disclosure of any record requested pursuant to this article.”

§ 2.

Said Code section is further amended by revising subparagraph (a)(11.3)(A) as follows:

“(11.3)(A) An individual’s social security number, mother’s birth name, credit card information, debit card information, bank account information, financial data or information, and insurance or medical information in all records, and if technically feasible at reasonable cost, day and month of birth, which shall be redacted prior to disclosure of any record requested pursuant to this article; ~~provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that this news media organization exception for access to social security numbers and day and month of birth and the other protected information set forth in this subparagraph shall not apply to teachers, employees of a public school, or public employees as set forth in paragraph (13.1) of this subsection. For purposes of this subparagraph,~~

1. S.B. 64, 150th Gen. Assem., Reg. Sess. (Ga. 2009).

~~the term "public employee" means any nonelected employee of the State of Georgia or its agencies, departments, or commissions or any county or municipality or its agencies, departments, or commissions."~~

§ 3.

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

FIRST SIGNATURE'S RATIONALE

Rep. Bill Heath, of the 31st district, introduced Senate Bill 124 to prevent the potential misuse of social security numbers by the media and the general public.² The Bill seeks to accomplish this by eliminating the news media exception, which currently permits news media organizations to access an individual's social security number via public documents subject to disclosure under the Georgia Open Records Act.³ The Georgia Open Records Act generally provides that documents and other records generated by state and local governments are public records and, as such, subject to inspection by the public.⁴ However, O.C.G.A. § 50-18-72 sets out a list of exceptions where certain public records are either altogether exempt from inspection or certain information contained within a public record must be redacted prior to disclosure.⁵ If enacted, Senate Bill 124 would make the redaction of an individual's "social security number, mother's birth name, credit card information,

2. Telephone Interview with Brandi Johnson, Legislative Assistant to Sen. Bill Heath, Sen. District No. 31 (Feb. 27, 2009).

3. *Id.*

4. O.C.G.A. § 50-18-70 (2008).

5. O.C.G.A. § 50-18-72 (2008). The news media exception found in Paragraph (11.3)(A) permits news media organizations to obtain an individual's social security number, among other information, for news gathering and reporting purposes. This provision further stipulates that the news media organization must make a written request for such information that is signed under oath by a person legally authorized to represent the organization. The written request must also state that the person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting. Paragraph (11.3)(A) of the code section states that the news media exception does not apply to teachers, employees of a public school, or public employees. The term, "public employees" is defined by the code as meaning "any non-elected employee of the State of Georgia or its agencies, departments, or commissions or any county or municipality or its agencies, departments, or commissions." Paragraph (11.3)(C) provides for penalties if the SSN is used for any purpose other than news reporting.

debit card information, bank account information, financial data or information, and insurance or medical information” mandatory for all individuals’ records whether the record is obtained for news reporting or any other authorized purpose.⁶

The Georgia First Amendment Foundation (“Foundation”) opposes Senate Bill 124 on the grounds that it decreases access to public records and eliminates the media’s ability to engage in certain types of investigative reporting.⁷ For instance, the Foundation claims Senate Bill 124 would limit the media’s ability to conduct an investigation of school bus drivers with DUI histories.⁸

LEGISLATIVE GENEALOGY

The first reading of Senate Bill 124 before the Senate occurred on February 10, 2009.⁹ The Senate then referred Senate Bill 124 to the Senate Committee on Government Oversight.¹⁰ On February 19, 2009, the Senate Committee favorably reported the bill. A second reading occurred on February 24, 2009. The third reading before the Senate occurred on March 4, 2009, and the Senate passed the Bill the same day. On March 5, 2009, the first reading before the House occurred, and the House assigned the Bill to the House Committee on Judiciary. The second reading before the House occurred on March 9, 2009. No further action on Senate Bill 124 occurred during the 2009 session.¹¹

PREPARED BY: Cherri L. Shelton

6. Ga. Gen. Assem., S.B. 124, *available at* http://www.legis.state.ga.us/legis/2009_10/fulltext/sb124.htm.

7. Georgia First Amendment Foundation 2009-10 Legislative Watch, *available at* http://www.gfaf.org/legislative_watch.html (last visited Mar. 9, 2009).

8. *Id.*

9. Ga. Senate Daily Composite Status Sheet, S.B. 124, Feb. 10, 2009 (March 20, 2009), *available at* http://www.legis.ga.gov/legis/2009_10/composite/SComposite.pdf [hereinafter *S.B. 124 Daily Status Sheet*].

10. *S.B. 124*, *supra* note 12.

11. Ga. Gen. Assem., S.B. 124, *available at* http://www.legis.ga.gov/legis/2009_10/sum/sb124.htm (last visited April 5, 2009).