

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.**

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: H3/6/01 H3/9/01*

# A Bill

**Act 1210 of 2001**  
HOUSE BILL 1765

5 By: Representatives Dees, *Borhauer*  
6  
7

## **For An Act To Be Entitled**

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS  
10 CODE CONCERNING CHILD MALTREATMENT; AND FOR OTHER  
11 PURPOSES.  
12

### **Subtitle**

13 AN ACT TO AMEND VARIOUS SECTIONS OF THE  
14 ARKANSAS CODE CONCERNING CHILD  
15 MALTREATMENT.  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code 12-12-501 is amended to read as follows:  
22 12-12-501. Title and Purpose.

23 (a) This subchapter shall be known and may be cited as the "Arkansas  
24 Child Maltreatment Act".

25 (b) It is the purpose of this subchapter, through the use of complete  
26 reporting of child abuse, to protect the best interest of the child, to  
27 prevent further harm to the child, to stabilize the home environment, to  
28 preserve family life, and to encourage cooperation among the states in  
29 dealing with child abuse.  
30

31 SECTION 2. Arkansas Code 12-12-503 is amended to read as follows:  
32 12-12-503. Definitions.

33 As used in this subchapter, unless the context otherwise requires:

34 (1) "Abandonment" means:

35 (A) Failure of the parent to provide reasonable support  
36 and to maintain regular contact with the juvenile through statement or

1 contact when the failure is accompanied by an intention on the part of the  
2 parent to permit the condition to continue for an indefinite period in the  
3 future;

4 (B) Failure to support or maintain regular contact with  
5 the juvenile without just cause; or

6 (C) An articulated intent to forego parental  
7 responsibility;

8 (2)(A) "Abuse" means any of the following acts or omissions by a  
9 parent, guardian, custodian, foster parent, or any person who is entrusted  
10 with the juvenile's care by a parent, guardian, custodian, or foster parent,  
11 including, but not limited to, an agent or employee of a public or private  
12 residential home, child care facility, public or private school, or any  
13 person legally responsible for the juvenile's welfare:

14 (i) Extreme ~~and~~ or repeated cruelty to a juvenile;  
15 ~~or~~

16 ~~(ii) Physical, psychological, or sexual abuse of any~~  
17 ~~juvenile which includes, but is not limited to, intentionally, knowingly, or~~  
18 ~~negligently and without justifiable cause;~~

19 ~~(a) Engaging in conduct creating a substantial~~  
20 ~~possibility of death, permanent or temporary disfigurement, illness,~~  
21 ~~impairment of any bodily organ, or an observable and substantial impairment~~  
22 ~~in the intellectual or psychological capacity of the juvenile to function~~  
23 ~~within his normal range of performance and behavior with due regard to his~~  
24 ~~culture;~~

25 ~~(b) Any nonaccidental physical injury or~~  
26 ~~mental injury; or~~

27 ~~(c) Any injury which is at variance with the~~  
28 ~~history given.~~

29 (ii) Engaging in conduct creating a realistic and  
30 serious threat of death, permanent or temporary disfigurement, or impairment  
31 of any bodily organ;

32 (iii) Injury to a juvenile's intellectual,  
33 emotional, or psychological development as evidenced by observable and  
34 substantial impairment of the juvenile's ability to function within the  
35 juvenile's normal range of performance and behavior;

36 (iv) Any injury which is at variance with the

1 hi story given ;

2 (v) Any nonaccidental physical injury;

3 (vi) Any of the following intentional or knowing  
4 acts, with physical injury and without justifiable cause:

5 (a) Throwing, kicking, burning, biting, or  
6 cutting a child;

7 (b) Striking a child with a closed fist;

8 (c) Shaking a child; or

9 (d) Striking a child on the face.

10 (vii) Any of the following intentional or knowing  
11 acts, with or without physical injury:

12 (a) Striking a child age six or younger on the  
13 face;

14 (b) Shaking a child age three or younger; or

15 (c) Interfering with a child's breathing.

16 (B)(1) This list is illustrative of unreasonable action  
17 and is not intended to be exclusive.

18 (2) No unreasonable action shall be construed to  
19 permit a finding of abuse without having established the elements of abuse.

20 ~~(B)~~C (i) "Abuse shall not include physical discipline of a  
21 child when it is reasonable and moderate and is inflicted by a parent or  
22 guardian for purposes of restraining or correcting the child. Abuse shall  
23 not include when a child suffers transient pain or minor temporary marks as  
24 the result of an appropriate restraint, if:

25 (a) The person exercising the restraint is an  
26 employee of an agency licensed or exempted from licensure under the Child  
27 Welfare Agency Licensing Act;

28 (b) The agency has policy and procedures  
29 regarding restraints;

30 (c) No other alternative exists to control the  
31 child except for a restraint;

32 (d) The child is in danger or hurting himself  
33 or herself or others;

34 (e) The person exercising the restraint has  
35 been trained in properly restraining children, de-escalation, and conflict  
36 resolution techniques; and

1 (f) The restraint is for a reasonable period  
2 of time.

3 ~~(ii) The following actions are not reasonable or~~  
4 ~~moderate when used to correct or restrain a child:~~

5 ~~(a) Throwing, kicking, burning, biting, or~~  
6 ~~cutting a child;~~

7 ~~(b) Striking a child with a closed fist;~~

8 ~~(c) Shaking a child under age three (3);~~

9 ~~(d) Striking or other actions which result in~~  
10 ~~any nonaccidental injury to a child under the age of eighteen (18) months;~~

11 ~~(e) Interfering with a child's breathing;~~

12 ~~(f) Threatening a child with a deadly weapon;~~

13 ~~(g) Striking a child on the face; or~~

14 ~~(h) Doing any other act that is likely to~~  
15 ~~cause, and which does cause, bodily harm greater than transient pain or minor~~  
16 ~~temporary marks.~~

17 (ii) Reasonable and moderate physical discipline  
18 inflicted by a parent or guardian shall not include any act that is likely to  
19 cause, and which does cause injury more serious than transient pain or minor  
20 temporary marks;

21 (iii) The age, size, and condition of the child, and  
22 the location of the injury and the frequency or recurrence of injuries shall  
23 be considered when determining whether the ~~bodily harm~~ physical discipline is  
24 reasonable or moderate;

25 ~~(iv) This list is illustrative of unreasonable~~  
26 ~~action and is not intended to be exclusive;~~

27 (3) "Caretaker" means a parent, guardian, custodian,  
28 foster parent, or any person ten (10) years of age or older who is entrusted  
29 with a child's care by a parent, guardian, custodian, or foster parent,  
30 including, but not limited to, an agent or employee of a public or private  
31 residential home, child care facility, public or private school, or any  
32 person responsible for a child's welfare;

33 (4)(A) "Central intake", otherwise referred to as the "child  
34 abuse hotline", refers to a unit which shall be established by the Department  
35 of Human Services for the purpose of receiving and recording notification  
36 made pursuant to this subchapter.

1 (B) Central intake shall be staffed twenty-four (24) hours  
2 per day and shall have statewide accessibility through a toll-free telephone  
3 number;

4 (5) "Child" or "juvenile" means an individual who:

5 (A) Is from birth to the age of eighteen (18);

6 (B) Is under the age of twenty-one (21) years, whether  
7 married or single, who was adjudicated delinquent under the Arkansas Juvenile  
8 Code of 1989, § 9-27-301 et seq., for an act committed prior to the age of  
9 eighteen (18) years, and for whom the court retains jurisdiction; or

10 (C) Was adjudicated dependent-neglected under the Arkansas  
11 Juvenile Code of 1989, § 9-27-301 et seq., before reaching the age of  
12 eighteen (18) years, and who, while engaged in a course of instruction or  
13 treatments, requests the court to retain jurisdiction until the course has  
14 been completed;

15 (6) "Child maltreatment" means abuse, sexual abuse, neglect,  
16 sexual exploitation, or abandonment;

17 (7) "Department" means the Department of Human Services;

18 (8) "Deviant sexual activity" means any act of sexual  
19 gratification involving:

20 (A) Penetration, however slight, of the anus or mouth of  
21 one person by the penis of another person; or

22 (B) Penetration, however slight, of the labia majora or  
23 anus of one person by any body member or foreign instrument manipulated by  
24 another person;

25 ~~(8)(9)~~ (A)(i) "Forcible compulsion" means physical force,  
26 intimidation, or a threat, express or implied, of death, ~~or~~ physical injury  
27 to, rape, sexual abuse, or kidnapping of any person.

28 (ii) If the act was committed against the will of  
29 the juvenile, then forcible compulsion has been used.

30 (B) The age, developmental state and stature of the victim  
31 and the relationship of the victim to the assailant, as well as the threat of  
32 deprivation of affection, rights, and privileges from the victim by the  
33 assailant, shall be considered in weighing the sufficiency of the evidence to  
34 prove compulsion;

35 (10) "Indecent exposure" means the exposure by a person of the  
36 person's sexual organs for the purpose of arousing or gratifying the sexual

1 desire of the person, or of any other person under circumstances in which the  
2 person knows the conduct is likely to cause affront or alarm;

3 ~~(9)~~(11) "Near fatality" means an act that, as certified by a  
4 physician, places the child in serious or critical condition;

5 ~~(10)~~(12) "Neglect" means those acts or omissions of a parent,  
6 guardian, custodian, foster parent, or any person who is entrusted with the  
7 juvenile's care by a parent, custodian, guardian, or foster parent,  
8 including, but not limited to, an agent or employee of a public or private  
9 residential home, child care facility, public or private school, or any  
10 person legally responsible under state law for the juvenile's welfare, which  
11 constitute:

12 (A) Failure or refusal to prevent the abuse of the  
13 juvenile when such person knows or has reasonable cause to know the juvenile  
14 is or has been abused;

15 (B) Failure or refusal to provide ~~the~~ necessary food,  
16 clothing, shelter, and education required by law, excluding the failure to  
17 follow an individualized educational program, or medical treatment necessary  
18 for the juvenile's well-being, except when the failure or refusal is caused  
19 primarily by the financial inability of the person legally responsible and no  
20 services for relief have been offered or rejected;

21 (C) Failure to take reasonable action to protect the  
22 juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect,  
23 or parental unfitness where the existence of such condition was known or  
24 should have been known;

25 (D) Failure or irremediable inability to provide for the  
26 essential and necessary physical, mental, or emotional needs of the juvenile;

27 (E) Failure to provide for the juvenile's care and  
28 maintenance, proper or necessary support, or medical, surgical, or other  
29 necessary care; or

30 (F) Failure, although able, to assume responsibility for  
31 the care and custody of the juvenile or participate in a plan to assume such  
32 responsibility;

33 (G) Failure to appropriately supervise the juvenile which  
34 results in the juvenile's being left alone at an inappropriate age or in  
35 inappropriate circumstances which put the juvenile in danger;

36 ~~(11)~~(13) "Parent" means a biological mother, an adoptive parent,

1 a man to whom the biological mother was married at the time of conception or  
2 birth, or who has been found, by a court of competent jurisdiction, to be the  
3 biological father of the juvenile;

4 (14) "Pornography" means:

5 (A) Obscene or licentious material, including pictures,  
6 movies and videos, lacking serious literary, artistic, political or  
7 scientific value, which, when taken as a whole and applying contemporary  
8 community standards would appear to the average person to appeal to the  
9 prurient interest; or

10 (B) Material which depicts sexual conduct in a patently  
11 offensive manner lacking serious literary, artistic, political or scientific  
12 value;

13 ~~(12)~~(15) "Serious bodily injury" means bodily injury which  
14 involves substantial risk of death, extreme physical pain, protracted and  
15 obvious disfigurement, or protracted loss or impairment of the function of a  
16 bodily member, organ, or mental faculty;

17 ~~(13)~~(16) "Severe maltreatment" means sexual abuse, sexual  
18 exploitation, acts or omissions which may or do result in death, abuse  
19 involving the use of a deadly weapon as defined by the Arkansas Criminal  
20 Code, § 5-1-101 et seq., bone fracture, internal injuries, burns, immersions,  
21 suffocation, abandonment, medical diagnosis of failure to thrive, or causing  
22 a substantial and observable change in the behavior or demeanor of the child;

23  
24 ~~(14)~~(17) "Sexual abuse" means:

25 (A) By a person ten (10) years of age or older to a person  
26 younger than eighteen (18) years of age:

27 (i) Sexual intercourse, deviate sexual activity, or  
28 sexual contact by forcible compulsion; ~~or~~

29 (ii) Attempted sexual intercourse, deviate sexual  
30 activity, or sexual contact;

31 (iii) Indecent exposure; or

32 (iv) Forcing, permitting or encouraging the watching  
33 of pornography or live sexual activity;

34 ~~That occurs between~~ Between a person eighteen (18)  
35 years of age or older and a person not his or her spouse who is younger than  
36 sixteen (16) years of age;

1 (i) Sexual intercourse, deviate sexual activity, or  
2 sexual contact or solicitation; or

3 (ii) Attempted sexual intercourse, deviate sexual  
4 activity, or sexual contact; or

5 (C) Between a person younger than eighteen (18) years of age and  
6 a sibling or caretaker:

7 (i) Sexual intercourse, deviate sexual activity, or  
8 sexual contact or solicitation; or

9 (ii) Attempted sexual intercourse, deviate sexual  
10 activity, or sexual contact;

11 (18) "Sexual contact" means any act of sexual gratification  
12 involving the touching, directly or through clothing, of the sex organs,  
13 buttocks, or anus of a person or the breast of a female; provided that  
14 nothing in this section shall permit normal affectionate hugging to be  
15 construed as sexual contact.

16 ~~(15)~~(19) "Sexual exploitation" means allowing, permitting, or  
17 encouraging participation or depiction of the juvenile in prostitution,  
18 obscene photographing, filming, or obscenely depicting a juvenile for any use  
19 or purpose; and

20 ~~(16)~~(20) "Subject of the report" means:

21 (A) The offender;

22 (B) The parents, guardians, and legal custodians of the  
23 child who is subject to suspected mal treatment; and

24 (C) The child who is the subject of suspected  
25 mal treatment.

26  
27 SECTION 3. Arkansas Code 12-12-505 is amended to read as follows:

28 12-12-505. Central registry.

29 (a) There is established within the Department of Human Services a  
30 statewide central registry for the collection of records of cases involving  
31 allegations of child mal treatment which are determined to be true pursuant to  
32 this subchapter.

33 (b)(1)(A) Records of all cases where allegations are determined to be  
34 true shall be retained by the central registry.

35 (B) Records of all cases where allegations are determined  
36 to be unsubstantiated shall be promptly expunged.



1           ~~(2) The department is permitted to keep information on~~  
2 ~~unsubstantiated reports in its casework files to assist in future risk and~~  
3 ~~safety assessment, but this information shall not be subject to disclosure~~  
4 ~~except as permitted in § 12-12-512(a)(1).~~

5           (2)(A) Information included in the automated data system shall  
6 be retained indefinitely to assist the department in assessing future risk  
7 and safety.

8           (B) Hard copy records of unsubstantiated reports shall be  
9 retained no longer than eighteen (18) months for purposes of audit.

10          (c) The central registry may adopt such rules and regulations as may  
11 be necessary to encourage cooperation with other states in exchanging true  
12 reports, and to effect a national registration system.

13  
14          SECTION 4. Arkansas Code 12-12-506 is amended to read as follows:

15          12-12-506. Disclosure of central registry data.

16          (a)(1) Reports made pursuant to this subchapter shall be confidential  
17 and may be used or disclosed only as provided in this section.

18                 (2)(A) If the allegations are determined to be true in  
19 accordance with § 12-12-512, disclosure is absolutely limited to:

20                         (i) The administration of the adoption, foster care,  
21 children's protective services programs, or child care licensing programs of  
22 any state;

23                         (ii) Federal, state, or local government entities,  
24 or any agent of such entities, having a need for such information in order to  
25 carry out its responsibilities under law to protect children from abuse or  
26 neglect;

27                         (iii) Any person who is the subject of a true  
28 report;

29                         (iv) A civil or administrative proceeding  
30 connected with the administration of the Arkansas Child Welfare State Plan  
31 where the court or hearing officer determines the information is necessary  
32 for the determination of an issue before the court or agency;

33                         (v) The administration of any federal or federally  
34 assisted program which provides assistance, in cash or in kind, or services  
35 directly to individuals on the basis of need;

36                         (vi) An audit or similar activity conducted in  
connection with the administration of such plan or program by any

1 governmental agency which is authorized by law to conduct the audit or  
2 activity;

3 (vii) A person, agency, or organization engaged in a  
4 bona fide research or evaluation project, but without information identifying  
5 individuals named in a report or record, provided that:

6 (a) Having that information open for review is  
7 essential to the research or evaluation;

8 (b) Prior written approval is granted by the  
9 Director of the Department of Human Services; and

10 (c) The child, through his parent, guardian,  
11 or guardian ad litem, gives permission to release the information;

12 (viii) A properly constituted authority, including  
13 multidisciplinary teams referenced in § 12-12-502(b), investigating a report  
14 of known or suspected child abuse or neglect or providing services to a child  
15 or family which is the subject of a report;

16 (ix)(a) The Division of Child Care and Early  
17 Childhood Education of the Department of Human Services and the child care  
18 facility owner or operator who requested the registry information through a  
19 signed notarized release from an individual who is a volunteer or who has  
20 applied for employment or who is currently employed by a child care facility  
21 or who is the owner or operator of a child care facility.

22 (b) This disclosure shall be for the limited  
23 purpose of providing central registry background information and shall  
24 indicate a true finding only;

25 (x) Child abuse citizen panels described in the  
26 Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a;

27 (xi) Child fatality review panels as authorized by  
28 the department;

29 (xii) To the general public, the findings or  
30 information about the case of child abuse or neglect which has resulted in a  
31 child fatality or near fatality, but the central registry may redact any  
32 information concerning siblings, attorney-client communications, and other  
33 confidential communications;

34 (xiii) A grand jury or court, upon a finding that  
35 information in the record is necessary for the determination of an issue  
36 before the court or grand jury; ~~and~~

1 (xiv) The current foster parents of a child who is a  
2 subject of a report;

3 (xv) Individual federal and state senators and  
4 representatives who agree not to allow any redisclosure of information,  
5 provided that no disclosure shall be made to any committee or legislative  
6 body of any information which identifies any recipient of services by name or  
7 address;

8 (xvi) A court-appointed special advocate upon  
9 presentation of an order of appointment for a child who is a subject of a  
10 report; and

11 (xvii) The attorney ad litem of a child who is the  
12 subject of a report.

13 (B) Reports of investigative determinations which are true  
14 shall be disclosed to the Division of Child Care and Early Childhood  
15 *Education of the Department of Human Services, by written report ~~oral report~~*  
16 *only, for purposes of enforcement of licensing laws and regulations.*

17 (b) Any licensing or registering authority in receipt of initial  
18 notification of suspected child maltreatment may access the central registry  
19 to the extent necessary to carry out its official responsibilities, but the  
20 information must be maintained as confidential.

21 (c)(1) Any person or agency to whom disclosure is made shall not  
22 disclose to any other person reports or other information obtained pursuant  
23 to this section.

24 (2) Provided, however, that a local educational agency or a  
25 school counselor shall forward all true reports of child maltreatment  
26 received from the department whenever a child transfers from one (1) local  
27 educational agency to another, and shall notify the department of the child's  
28 new school, and address, if known.

29 (3) Any person disclosing information in violation of this  
30 subsection shall be guilty of a Class C misdemeanor.

31 (d) ~~Disclosure is prohibited to any committee or legislative body,~~  
32 ~~other than an agency referred to in §§ 12-12-507(e) and 12-12-509—12-12-511~~  
33 ~~with respect to an activity referred to in such sections, of any information~~  
34 ~~which identifies by name or address any applicant or recipient.~~ True reports  
35 that have been administratively appealed pursuant to the Child Maltreatment  
36 Act and which have been stayed because of criminal proceedings shall not be

1 disclosed other than for administration of adoption, foster care, or  
2 children's protective services programs.

3 (e)(1) The department shall not release data that would identify the  
4 person who made the report unless a court of competent jurisdiction orders  
5 release of the information after such court has reviewed, in camera, the  
6 record related to the report and has found it has reason to believe that the  
7 reporter knowingly made a false report.

8 (2) However, the information shall be disclosed to the  
9 prosecuting attorney or law enforcement officers on request.

10 (f) Within ten (10) days following an investigative determination, the  
11 department shall provide the person or agency making notification of  
12 suspected child maltreatment information as to whether an investigation has  
13 been conducted and whether services have been offered.

14 (g) The department may disclose the investigative determination ~~to the~~  
15 ~~employer~~ of any offender when the offender is engaged in child-related  
16 activities or employment, and the department has determined that children  
17 under the care of the offender are at risk of maltreatment by the offender.

18 (h) Nothing in this subchapter shall be construed to prevent  
19 subsequent disclosure by the subject of the report.

20 (i) Any records of screened-out reports of child maltreatment ~~will be~~  
21 ~~treated as if they are unfounded reports~~ shall not be disclosed and may only  
22 be used within the department for purposes of administration of the program.  
23

24 SECTION 5. Arkansas Code 12-12-507 is amended to read as follows:

25 12-12-507. Reports of suspected abuse or neglect.

26 (a) Any person with reasonable cause to suspect child maltreatment or  
27 that a child has died as a result of child maltreatment, or who observes a  
28 child being subjected to conditions or circumstances which would reasonably  
29 result in child maltreatment, may immediately notify the child abuse hotline.

30 (b) When any physician, surgeon, coroner, dentist, osteopath, resident  
31 intern, licensed nurse, medical personnel who may be engaged in admission,  
32 examination, care, or treatment of persons, teacher, school official, school  
33 counselor, social worker, family service worker, day care center worker,  
34 Division of Youth Services employee, employee working under contract for the  
35 Division of Youth Services, or any other child or foster care worker, mental  
36 health professional, domestic violence shelter employee, domestic violence

1 shelter volunteer, peace officer, law enforcement official, prosecuting  
2 attorney, or judge has reasonable cause to suspect that a child has been  
3 subjected to child maltreatment, or that a child has died as a result of  
4 child maltreatment, or who observes a child being subjected to conditions or  
5 circumstances which would reasonably result in child maltreatment, he shall  
6 immediately notify the child abuse hotline.

7 (c) No privilege or contract shall relieve anyone required by this  
8 subchapter to make notification of the requirement of making notification.

9 (d) In the event that the child abuse hotline receives notification  
10 that a client or a resident of any facility licensed or registered by the  
11 State of Arkansas has been subjected to child maltreatment while at such  
12 facility, the child abuse hotline shall immediately notify that facility's  
13 licensing or registering authority of its receipt of initial notification of  
14 suspected maltreatment.

15 (e)(1) When a person, agency, corporation, or partnership then  
16 providing substitute care for any child in the custody of the department or a  
17 department employee or employee's spouse or other person residing in the home  
18 is reported as being suspected of child maltreatment, the investigation shall  
19 be conducted pursuant to procedures established by the department.

20 (2)(A) Such procedures shall include referral of allegations to  
21 the Department of Arkansas State Police or appropriate law enforcement agency  
22 should the allegation involve severe maltreatment.

23 (B) The investigating agency shall immediately notify  
24 local law enforcement of all reports of severe maltreatment.

25 (f)(1) The child abuse hotline shall accept a report when the  
26 allegations if true would constitute child maltreatment as defined in § 12-  
27 12-503 and as long as sufficient identifying information is provided to  
28 identify and locate the child or the family.

29 (2) The child abuse hotline shall accept a report of physical  
30 abuse, if any of the following intentional or knowing acts are alleged to  
31 occur, but the report shall not be determined to be true unless the child  
32 suffered an injury as the result of the act:

33 (A) Throwing, kicking, burning, biting, or cutting a  
34 child;

35 (B) Striking a child with a closed fist;

36 (C) Shaking a child age four or older; or

1 (D) Striking a child age seven or older on the face.

2 (3) The child abuse hotline shall accept a report of physical  
3 abuse, if any of the following intentional or knowing acts are alleged to  
4 occur:

5 (A) Shaking a child age three or younger;

6 (B) Striking a child age six or younger on the face; or

7 (C) Interfering with a child's breathing.

8 (4)(A) The child abuse hotline shall accept a report of physical  
9 abuse if a child suffers an injury as the result of a restraint.

10 (B) The report shall not be determined to be true if the  
11 injury is a minor temporary mark or causes transient pain and was an  
12 acceptable restraint as outlined at §12-12-503(2)(C)(i).

13 (2) The child abuse hotline shall accept a report of physical  
14 abuse if any of the following intentional or knowing acts are alleged to  
15 occur, but the report shall not be determined to be true unless the child  
16 suffered an injury as the result of the act:

17 (a) Throwing, kicking, burning, biting, or  
18 cutting a child;

19 (b) Striking a child with a closed fist;

20 (c) Shaking a child;

21 (d) Interfering with a child's breathing; or

22 (e) Striking a child on the face.

23 (g)(1) The child abuse hotline shall accept a report if the child or  
24 the child's family is present in Arkansas or the incident occurred in  
25 Arkansas.

26 (2) If the child or the child's family resides in another state,  
27 the hotline shall screen out the report, transfer the report to the hotline  
28 of the state where the child or the child's family resides or the incident  
29 occurred, and send a copy to the appropriate investigating agency in Arkansas  
30 to initiate courtesy interviews.

31 (3) If the incident occurred in Arkansas and the victim, parents  
32 or offender no longer reside in Arkansas, the hotline shall accept the report  
33 and the Arkansas investigating agency shall contact the other state and  
34 request a courtesy interview with the out-of-state subject of the report.

35 (h) The child abuse hotline shall accept telephone calls or other  
36 communications alleging that a child is dependent as defined by the Arkansas

1 Juvenile Code at § 9-27-303 and shall immediately refer this information to  
 2 the department.

3

4 SECTION 6. Arkansas Code 12-12-508, concerning radiology procedures,  
 5 photographs, and records of child abuse, is amended by adding the following  
 6 new subsection:

7 (d) The department and law enforcement officials shall be allowed  
 8 access to the child's public and private school records during the course of  
 9 the child maltreatment investigation.

10

11 SECTION 7. Arkansas Code 12-12-509(d)(1), concerning investigation and  
 12 examination of children, is amended to read as follows:

13 (d)(1) An investigative determination shall be made in each  
 14 investigation within thirty (30) days regardless of whether the investigation  
 15 is conducted by the department, the Family Protection Division of the  
 16 Arkansas State Police, or local law enforcement.

17

18 SECTION 8. Arkansas Code 12-12-511(b)(2), concerning when  
 19 investigations are closed, is amended to read as follows:

20 ~~(2)(A)~~ *If at any time before or during the investigation it*  
 21 *appears that the offender is identified and is not a caretaker of the victim*  
 22 *child, excluding investigations of sexual abuse, the department shall;*

23 ~~(i)(A)~~ *Refer the matter to the appropriate law*  
 24 *enforcement agency;*

25 ~~(ii)(B)~~ *Close its investigation; and*

26 ~~(iii)(C)~~ *Forward a copy of its findings to the*  
 27 *appropriate law enforcement agency for that agency's further use in any*  
 28 *criminal investigation.*

29 ~~(B) If the alleged offender is a juvenile, but not a~~  
 30 ~~caretaker, law enforcement may refer the matter to the department for~~  
 31 ~~investigation.~~

32 SECTION 9. Arkansas Code 12-12-512 is amended to read as follows:

33 12-12-512. Child maltreatment investigative determination - Notice of  
 34 finding - Amendment and appeal.

35 (a) Upon completion of the investigation, the Department of Human  
 36 Services shall determine that the allegations of child maltreatment are:

1 (1) Unsubstantiated:

2 (A) This determination shall be entered when the  
3 allegation is not supported by a preponderance of the evidence.

4 (B) There can be no disclosure of unsubstantiated reports  
5 except:

6 (i) For release to the prosecutor for the limited  
7 purpose of prosecution of a person who willfully makes false notification  
8 pursuant to this subchapter;

9 (ii) To a subject of the report; and

10 (iii) To a court if the information in the record is  
11 necessary for a determination of an issue before the court;

12 (2) True:

13 (A) This determination shall be entered when the  
14 allegation is supported by a preponderance of the evidence.

15 (B) A determination of true shall not be entered when a  
16 parent, practicing his religious beliefs, does not, for that reason alone,  
17 provide medical treatment for a child, but in lieu of such treatment the  
18 child is being furnished with treatment by spiritual means alone, through  
19 prayer, in accordance with a recognized religious method of healing by an  
20 accredited practitioner.

21 (C)(i) Notwithstanding subdivision (a)(2) of this section,  
22 the department shall have the authority to pursue:

23 (a) Any legal remedies, including the  
24 authority to initiate legal proceedings in a court of competent jurisdiction;

25  
26 (b) Medical care or treatment for a child when  
27 such care or treatment is necessary to prevent or remedy serious harm to the  
28 child, or to prevent the withholding of medically indicated treatment from  
29 child with life-threatening conditions.

30 (ii) Except with respect to the withholding of  
31 medically indicated treatments from disabled infants with life-threatening  
32 conditions, case-by-case determinations concerning the exercise of authority  
33 in this subsection shall be within the sole discretion of the department.

34 (b) If the investigation cannot be completed, the investigation shall  
35 be determined incomplete and placed in inactive status.

36 (c)(1)(A) In every case where a report is determined to be true, the



1 department shall notify each subject of the report of the determination.

2 (B) Notification shall be in writing by ~~hand delivery or~~  
3 ~~by certified mail, restricted delivery, or by process server.~~

4 (C) Such notification shall include the following:

5 (i) The investigative determination, true or  
6 unsubstantiated, exclusive of the source of the notification;

7 (ii) A statement that the person named as the  
8 offender of the true report may request an administrative hearing;

9 (iii) A statement that such request must be made to  
10 the department within thirty (30) days of receipt of the hand delivery or  
11 mailing of the notice of determination; and

12 (iv) The name of the person making notification, his  
13 occupation, and where he can be reached.

14 (2) The administrative hearing process must be completed within  
15 ninety (90) days from the date of the receipt of the request for a hearing,  
16 provided that:

17 (A) Delays in completing the hearing that are attributable  
18 to the petitioner shall not count against the ninety (90) day limit;

19 (B) Failure to complete the hearing process in a timely  
20 fashion shall not deprive the department or a court reviewing the child  
21 mal treatment determination of jurisdiction to make a final agency  
22 determination or review a final agency determination pursuant to the  
23 Administrative Procedure Act; and

24 (C) The ninety (90) day limit shall not apply if there is  
25 an ongoing criminal investigation or criminal charges have or will be filed  
26 regarding the occurrence that is the subject of the child maltreatment  
27 report.

28 (i) In those cases the administrative hearing shall  
29 be stayed pending final disposition of the criminal proceedings.

30 (ii) It shall be the duty of the petitioner to  
31 report the final disposition of the criminal proceeding to the department.

32 (iii) Each report shall include a file-marked copy  
33 of the criminal disposition.

34 (iv) The request for administrative hearing shall be  
35 deemed waived if the petitioner fails to report the disposition of the  
36 criminal proceedings within thirty (30) days of the entry of a dispositive

1 judgment or order.

2 (v) If the criminal proceedings have reached no  
3 final outcome within twelve (12) months of the filing of the administrative  
4 appeal, the administrative appeal will be deemed waived if the petitioner  
5 fails to provide a written statement of the status of the criminal  
6 proceedings every sixty (60) days, and a disposition report within thirty  
7 (30) days of the entry of a dispositive judgment or order;

8 (3) No action by appeal shall be brought more than two (2)  
9 years after the completion of the investigation.

10 (4) When the department conducts such administrative  
11 appeal hearings, the chief counsel of the department is authorized to require  
12 the attendance of witnesses and the production of books, records, or other  
13 documents through the issuance of subpoenas when such testimony or  
14 information is necessary to adequately present the position of the Department  
15 of Human Services, the investigating protective services agency, or the  
16 alleged offender or adult subject of a report.

17 (d) Failure to obey the subpoena may be deemed a contempt, punishable  
18 accordingly.

19 (e) Administrative hearing decisions and all exhibits submitted at the  
20 hearing are confidential and may be used or disclosed only as provided in §  
21 12-12-506(a)(2)(A).

22

23 SECTION 10. Arkansas Code 12-12-513, concerning subpoena forms in  
24 child abuse cases, is amended to read as follows:

25 12-12-513. Requests for subpoenas - Form.

26 (a) Requests for subpoenas shall be granted by the chief counsel of  
27 the department, or a designee, if the testimony or documents desired are  
28 considered necessary and material without being unduly repetitious of other  
29 available evidence.

30 (b) Subpoenas issued pursuant to the authority of the chief counsel of  
31 the department shall be substantially in the following form: "The State of  
32 Arkansas to the Sheriff of \_\_\_\_\_ County: You are commanded to  
33 subpoena (name) \_\_\_\_\_, (address)  
34 \_\_\_\_\_, to attend a proceeding before  
35 the Arkansas Department of Human Services to be held at \_\_\_\_\_ on the  
36 \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~20\_\_\_\_, at \_\_\_\_ m., and testify

1 and/or produce the following books, records, or other documents, to wit:  
 2 \_\_\_\_\_ in a matter of (style of proceeding)  
 3 \_\_\_\_\_ to be conducted under the authority  
 4 of \_\_\_\_\_. WITNESS my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
 5 ~~1920~~\_\_\_\_\_.

6  
 7  
 8 \_\_\_\_\_"  
 9 Chief Counsel, or designee, Department of Human Services

10  
 11 SECTION 11. Arkansas Code 12-12-514(d), concerning child maltreatment  
 12 investigative reports, is amended to read as follows:

13 (d) Notwithstanding any provision of this subchapter, the department  
 14 shall forward the investigative determination, exclusive of the source of the  
 15 notification, the name of the person making notification, his occupation, and  
 16 where he can be reached, to the parents and alleged offender by ~~hand delivery~~  
 17 a process server or by certified mail, restricted delivery, addressed to the  
 18 recipient's last known address.

19  
 20 SECTION 12. Arkansas Code 12-12-515 is amended to read as follows:  
 21 12-12-515. Provision of information to person or agency making initial  
 22 notification of suspected maltreatment.

23 (a)(1) If the person or agency making the initial notification of  
 24 suspected child maltreatment is required to do so by this subchapter, the  
 25 department, within ten (10) business days of the child maltreatment  
 26 investigative determination, shall provide to the person the following  
 27 information:

- 28 (A) The investigative determination; and
- 29 (B) Services offered and provided.

30 (2)(A) The department shall provide the local educational  
 31 agency, specifically to the school counselor where the maltreated child,  
 32 including the name and relationship of the offender to the maltreated child,  
 33 attends school, a report indicating the department's founded investigative  
 34 determination regarding the child and the services offered or provided by the  
 35 department to the child.

36 (B) The department shall also provide the local educational

1 agency, specifically the school counselor, a report indicating the  
2 department's founded investigative determination on any juvenile who is named  
3 as the offender in a true report, and the services offered or provided by the  
4 department to the juvenile offender.

5 (3) Any local educational agency receiving such information from  
6 the department shall make this information, if it is a true report, a part of  
7 the child's permanent educational record and shall treat such information as  
8 educational records are treated under the Family Educational Rights and  
9 Privacy Act, 20 U.S.C. § 1232g.

10 (b)(1) The department may provide information to a person or agency  
11 that provides ~~professional~~ services such as medical examination of, an  
12 assessment interview with, or diagnosing, caring for, treating, or  
13 supervising a victim of maltreatment.

14 (2) This information may include:

15 (A) The investigative determination or the investigation  
16 report; and

17 (B) The services offered and provided.

18  
19 SECTION 13. Arkansas Code 12-12-516 is amended to read as follows:  
20 12-12-516. Protective custody of children.

21 (a)(1) A police officer, a law enforcement official, a juvenile court  
22 judge during juvenile proceedings, or a designated employee of the Department  
23 of Human Services may take a child into protective custody or any person in  
24 charge of a hospital or similar institution or any physician treating a child  
25 may keep that child in his or her custody without the consent of the parent  
26 or the guardian, whether or not additional medical treatment is required, if  
27 the child is dependent as defined by the Arkansas Juvenile Code at § 9-27-303  
28 or if the circumstances or conditions of the child are such that continuing  
29 in his place of residence or in the care and custody of the parent, guardian,  
30 custodian, or caretaker presents an immediate danger of severe maltreatment.

31  
32 (2) However, such custody shall not exceed seventy-two (72)  
33 hours, except in the event that the expiration of seventy-two (72) hours  
34 falls on a weekend or holiday, in which case, protective custody may be  
35 extended through the next business day following the weekend or holiday.

36 (b) The individual taking the child into protective custody may give

1 effective consent for medical, dental, health, and hospital services during  
2 protective custody.

3 (c) In any case in which protective custody is invoked the individual  
4 taking the child into protective custody shall notify the department in order  
5 that a child protective proceeding may be initiated within the time specified  
6 in this section.

7 (d) The department or prosecuting attorney is empowered to file  
8 petitions in the appropriate court seeking imposition of penalties for  
9 violation of this subchapter.

10

11 SECTION 14. Arkansas Code 12-12-518, concerning protective custody of  
12 children, is amended to read as follows:

13 12-12-518. Privileged communications as evidence - Exception.

14 It is the public policy of the State of Arkansas to protect the health,  
15 safety, and the welfare of minors within the state. In order to effectuate  
16 that policy:

17 ~~(1) Any provision of the Arkansas Uniform Rules of Evidence~~  
18 ~~notwithstanding, and except as provided in subdivision (2) of this section,~~  
19 ~~any privilege between husband and wife or between any professional person,~~  
20 ~~except lawyer/client and between a minister, including a Christian Science~~  
21 ~~practitioner, and any person confessing to or being counseled by a minister,~~  
22 ~~shall not constitute grounds for excluding evidence at any proceeding~~  
23 ~~regarding child abuse, sexual abuse, or neglect of a child.~~

24 (1)(A) No privilege shall prevent anyone from reporting child  
25 mal treatment when the information is obtained from a child.

26 (B) No privilege shall prevent anyone, except between a  
27 lawyer and client or between a minister, including a Christian Science  
28 practitioner, and any person confessing to or being counseled by the  
29 minister, from testifying concerning child mal treatment when the information  
30 is obtained from a child.

31 ~~(2) Any provision to the Arkansas Uniform Rules of Evidence~~  
32 ~~notwithstanding, any privilege between a minister, including a Christian~~  
33 ~~Science practitioner, and any person confessing to or being counseled by the~~  
34 ~~minister shall not constitute grounds for excluding evidence at any~~  
35 ~~dependent/neglect proceeding or proceedings involving the custody of a minor.~~  
36 No privilege, except between a lawyer and client or between a minister,

1 including a Christian Science practitioner, and any person confessing to or  
2 being counseled by the minister, shall prevent anyone from reporting or  
3 testifying concerning child maltreatment when the information is obtained  
4 from an adult.

5 (3) When any physician, psychologist, psychiatrist, or licensed  
6 counselor or therapist conducts interviews with or provides therapy to any  
7 subject of a report of suspected child maltreatment for purposes related to  
8 child maltreatment, the physician, psychologist, psychiatrist, or licensed  
9 counselor or therapist shall be deemed to be performing services on behalf of  
10 the child.

11 (4) Adult subjects of a report of suspected child maltreatment  
12 cannot invoke privilege on the child's behalf.

13 (5) Transcripts of testimony introduced in a child maltreatment  
14 proceeding pursuant to this section shall not be received into evidence in  
15 any other civil or criminal proceeding.

16

17 SECTION 15. Arkansas Code Title 12, Chapter 12, Subchapter 5 is  
18 amended by adding the following additional section:

19 12-12-519. Custody of Children and Services to Families.

20 (a)(1) During the course of any child maltreatment investigation,  
21 whether conducted by the department, the Arkansas State Police or local law  
22 enforcement, the department shall assess whether or not the child can safely  
23 remain in the home.

24 (2) The child's health and safety shall be the paramount concern  
25 in determining whether or not to remove a child from the custody of his  
26 parents.

27 (b)(1)(A) If an investigation determines that the child cannot safely  
28 remain at home, the department shall take steps to remove the child under  
29 protective custody as outlined in § 12-12-516 or pursuant to the Arkansas  
30 Juvenile Code.

31 (B) After the department has removed the child, the child  
32 shall be placed in a licensed or approved foster home, shelter or facility,  
33 or an exempt child welfare agency as defined at § 9-28-402(12).

34 (C) No one, including the family, the department, the  
35 Arkansas State Police or local law enforcement, shall allow the child to be  
36 placed in a non-approved or non-licensed foster home, shelter or facility.

