

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.

**Act 1706 of the Regular Session**

*As Engrossed: S3/1/05 S3/8/05 H3/29/05*

**A Bill**

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

SENATE BILL 392

4  
5 By: Senator Madison  
6 By: Representative Borhauer

7  
8  
9 **For An Act To Be Entitled**

10 AN ACT TO AMEND THE CHILD MALTREATMENT ACT; AND  
11 FOR OTHER PURPOSES.

12  
13 **Subtitle**

14 TO AMEND THE CHILD MALTREATMENT ACT.

15  
16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18  
19 SECTION 1. Arkansas Code § 12-12-503 is amended to read as follows:  
20 12-12-503. Definitions.

21 As used in this subchapter:

22 (1)(A) "Abandonment" means:

23 (i) Failure of a parent to:

24 (a) Provide reasonable support and to maintain  
25 regular contact with a juvenile through statement or contact when the failure  
26 is accompanied by an intention on the part of the parent to permit the  
27 condition to continue for an indefinite period in the future;

28 (b) Support or maintain regular contact with a  
29 juvenile without just cause; ~~and~~ or

30 (ii) An articulated intent to forego parental  
31 responsibility.

32 (B) "Abandonment" does not include acts or omissions of a  
33 parent toward a married minor.

34 (2)(A) "Abuse" means any of the following acts or omissions by a  
35 parent, guardian, custodian, foster parent, person eighteen (18) years of age



1 or older living in the home with a child whether related or unrelated to the  
2 child, or any person who is entrusted with the juvenile's care by a parent,  
3 guardian, custodian, or foster parent, including, but not limited to, an  
4 agent or employee of a public or private residential home, child care  
5 facility, public or private school, or any person legally responsible for the  
6 juvenile's welfare, but excluding the spouse of a minor:

7 (i) Extreme or repeated cruelty to a juvenile;

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

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

15 (iv) Any injury that is at variance with the history  
16 given;

17 (v) Any nonaccidental physical injury;

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

20 (a) Throwing, kicking, burning, biting, or  
21 cutting a child;

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

23 (c) Shaking a child; or

24 (d) Striking a child on the face or head;

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

27 (a) Striking a child age six (6) or younger on  
28 the face or head;

29 (b) Shaking a child age three (3) or younger;

30 (c) Interfering with a child's breathing; ~~or~~

31 (d) Pinching, biting, or striking a child in  
32 the genital area;

33 (e) Tying a child to a fixed or heavy object or  
34 binding or tying a child's limbs together;

35 (f) Giving a child or permitting a child to  
36 consume or inhale a poisonous or noxious substance not prescribed by a

1 physician that has the capacity to interfere with normal physiological  
2 functions;

3 (g) Giving a child or permitting a child to  
4 consume or inhale a substance not prescribed by a physician that has the  
5 capacity to alter the mood of the child, including, but not limited to, the  
6 following:

7 (1) Marijuana;

8 (2) Alcohol, excluding alcohol given to  
9 a child during a recognized and established religious ceremony or service;

10 (3) Narcotics; or

11 (4) Over-the-counter drugs if a person  
12 purposely administers an overdose to a child or purposely gives an  
13 inappropriate over-the-counter drug to a child and the child is detrimentally  
14 impacted by the overdose or the over-the-counter drug;

15 (h) Exposing a child to chemicals that have  
16 the capacity to interfere with normal physiological functions, including, but  
17 not limited to, chemicals used or generated during the manufacture of  
18 methamphetamine; or

19 (i) Subjecting a child to Munchausen's  
20 Syndrome by Proxy or a Factitious Illness by Proxy if the incident is  
21 reported and confirmed by medical personnel or a medical facility.

22 (B)(i) The list in subdivision (2)(A) of this section is  
23 illustrative of unreasonable action and is not intended to be exclusive.

24 (ii) No unreasonable action shall be construed to  
25 permit a finding of abuse without having established the elements of abuse.

26 (C)(i) "Abuse" shall not include physical discipline of a  
27 child when it is reasonable and moderate and is inflicted by a parent or  
28 guardian for purposes of restraining or correcting the child.

29 (ii) "Abuse" shall not include when a child suffers  
30 transient pain or minor temporary marks as the result of an appropriate  
31 restraint if:

32 (a) The person exercising the restraint is an  
33 employee of an agency licensed or exempted from licensure under the Child  
34 Welfare Agency Licensing Act, § 9-28-401 et seq.;

35 (b) The agency has policy and procedures  
36 regarding restraints;

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

3 (d) The child is in danger or hurting himself  
4 or herself or others;

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

8 (f) The restraint is for a reasonable period  
9 of time.

10 (iii) Reasonable and moderate physical discipline  
11 inflicted by a parent or guardian shall not include any act that is likely to  
12 cause and which does cause injury more serious than transient pain or minor  
13 temporary marks.

14 (iv) The age, size, and condition of the child and  
15 the location of the injury and the frequency or recurrence of injuries shall  
16 be considered when determining whether the physical discipline is reasonable  
17 or moderate;

18 (3) "Caretaker" means a parent, guardian, custodian, foster  
19 parent, or any person ten (10) years of age or older who is entrusted with a  
20 child's care by a parent, guardian, custodian, or foster parent, including,  
21 but not limited to, an agent or employee of a public or private residential  
22 home, child care facility, public or private school, or any person  
23 responsible for a child's welfare, but excluding the spouse of a minor;

24 (4)(A) "Central intake", otherwise referred to as the "child  
25 abuse hotline", means a unit that shall be established by the Department of  
26 Human Services for the purpose of receiving and recording notification made  
27 pursuant to this subchapter.

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

31 (5) "Child" or "juvenile" means an individual who is from birth  
32 to the age of eighteen (18);

33 (6) "Child maltreatment" means abuse, sexual abuse, neglect,  
34 sexual exploitation, or abandonment;

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

36 (8) "Deviate sexual activity" means any act of sexual

1 gratification involving:

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

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

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

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

12 (B) The age, developmental stage, and stature of the  
13 victim and the relationship of the victim to the assailant, as well as the  
14 threat of deprivation of affection, rights, and privileges from the victim by  
15 the assailant, shall be considered in weighing the sufficiency of the  
16 evidence to prove compulsion;

17 (10) "Indecent exposure" means the exposure by a person of the  
18 person's sexual organs for the purpose of arousing or gratifying the sexual  
19 desire of the person or of any other person under circumstances in which the  
20 person knows the conduct is likely to cause affront or alarm;

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

23 (12) "Neglect" means those acts or omissions of a parent,  
24 guardian, custodian, foster parent, or any person who is entrusted with the  
25 juvenile's care by a parent, custodian, guardian, or foster parent,  
26 including, but not limited to, an agent or employee of a public or private  
27 residential home, child care facility, public or private school, or any  
28 person legally responsible under state law for the juvenile's welfare, but  
29 excluding the spouse of a minor and the parents of the married minor, which  
30 constitute:

31 (A) Failure or refusal to prevent the abuse of the  
32 juvenile when the person knows or has reasonable cause to know the juvenile  
33 is or has been abused;

34 (B) Failure or refusal to provide necessary food,  
35 *clothing, shelter, and education required by law, excluding the failure to*  
36 follow an individualized educational program, or medical treatment necessary

1 for the juvenile's well-being, except when the failure or refusal is caused  
2 primarily by the financial inability of the person legally responsible and no  
3 services for relief have been offered ~~or rejected~~;

4 (C) Failure to take reasonable action to protect the  
5 *juvenile from abandonment, abuse, sexual abuse*, sexual exploitation, neglect,  
6 or parental unfitness when the existence of the condition was known or should  
7 have been known;

8 (D) Failure or irremediable inability to provide for the  
9 essential and necessary physical, mental, or emotional needs of the juvenile  
10 including the failure to provide a shelter that does not pose a risk to the  
11 health or safety of the juvenile;

12 (E) Failure to provide for the juvenile's care and  
13 maintenance, proper or necessary support, or medical, surgical, or other  
14 necessary care;

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

18 (G) Failure to appropriately supervise the juvenile that  
19 results in the juvenile's being left alone at an inappropriate age or in  
20 inappropriate circumstances ~~that put the juvenile in danger~~ creating a  
21 dangerous situation or a situation that puts the child at risk of harm;

22 (13) "Parent" means a biological mother, an adoptive parent, or  
23 a man to whom the biological mother was married at the time of conception or  
24 birth or who has been found by a court of competent jurisdiction to be the  
25 biological father of the juvenile;

26 (14) "Pornography" means:

27 (A) ~~Obscene or licentious material, including pictures,~~  
28 ~~movies, and videos, lacking serious literary, artistic, political, or~~  
29 ~~scientific value, which, when taken as a whole and applying contemporary~~  
30 ~~community standards, would appear to the average person to appeal to the~~  
31 ~~prurient interest~~ Pictures, movies, or videos that lack serious literary,  
32 artistic, political, or scientific value and that, when taken as a whole and  
33 applying contemporary community standards, would appear to the average person  
34 to appeal to the prurient interest; ~~or~~

35 (B) Material that depicts sexual conduct in a patently  
36 offensive manner lacking serious literary, artistic, political, or scientific

1 value; or

2 (C) Obscene or licentious material;

3 (15) "Serious bodily injury" means bodily injury that involves  
4 substantial risk of death, extreme physical pain, protracted and obvious  
5 disfigurement, or protracted loss or impairment of the function of a bodily  
6 member, organ, or mental faculty;

7 (16) "Severe maltreatment" means sexual abuse, sexual  
8 exploitation, acts, or omissions which may or do result in death, abuse  
9 involving the use of a deadly weapon as defined by § 5-1-102(4), bone  
10 fracture, internal injuries, burns, immersions, suffocation, abandonment,  
11 medical diagnosis of failure to thrive, or causing a substantial and  
12 observable change in the behavior or demeanor of the child;

13 (17) "Sexual abuse" means:

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

16 (i) Sexual intercourse, deviate sexual activity, or  
17 sexual contact by forcible compulsion;

18 (ii) Attempted sexual intercourse, deviate sexual  
19 activity, or sexual contact by forcible compulsion;

20 (iii) Indecent exposure; or

21 (iv) Forcing the watching of pornography or live  
22 sexual activity;

23 (B) By a person eighteen (18) years of age or older to a  
24 person not his or her spouse who is younger than sixteen (16) years of age:

25 (i) Sexual intercourse, deviate sexual activity, or  
26 sexual contact ~~or solicitation~~; or

27 (ii) Attempted sexual intercourse, deviate sexual  
28 activity, or sexual contact;

29 (C) By a sibling or caretaker to a person younger than  
30 eighteen (18) years of age:

31 (i) Sexual intercourse, deviate sexual activity, or  
32 sexual contact ~~or solicitation~~; or

33 (ii) Attempted sexual intercourse, deviate sexual  
34 activity, or sexual contact;

35 (D) By a caretaker to a person younger than eighteen (18)  
36 years of age:

1 (i) Forcing or encouraging the watching of  
2 pornography; or

3 (ii) Forcing, permitting, or encouraging the  
4 watching of live sexual activity; or

5 (E) By a person younger than ten (10) years of age to a  
6 person younger than eighteen (18) years of age:

7 (i) Sexual intercourse, deviate sexual activity, or  
8 sexual contact by forcible compulsion; or

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

11 (18)(A)(i) "Sexual contact" means any act of sexual  
12 gratification involving:

13 (a) the The touching, directly or through  
14 clothing, of the sex organs, buttocks, or anus of a person or the breast of a  
15 female;

16 (b) The encouraging of the child to touch the  
17 offender in a sexual manner; or

18 (c) The offender requesting to touch the child  
19 in a sexual manner.

20 (ii) Evidence of sexual gratification may be  
21 inferred from the attendant circumstances surrounding the specific complaint  
22 of child maltreatment.

23 (B) Provided, nothing in this section shall permit normal  
24 affectionate hugging to be construed as sexual contact;

25 (19) "Sexual exploitation" means:

26 (A) allowing Allowing, permitting, or encouraging  
27 participation or depiction of the juvenile child in:

28 (i) prostitution, Prostitution;

29 (ii) obscene photographing, Obscene photography;

30 (iii) Obscene filming; or

31 (B) obscenely Obscenely depicting, obscenely posing, or  
32 obscenely posturing a juvenile child for any use or purpose;

33 (20) "Subject of the report" means:

34 (A) The offender;

35 (B) The custodial and noncustodial parents, guardians, and  
36 legal custodians of the child who is subject to suspected maltreatment; and



1 (C) The child who is the subject of suspected  
2 maltreatment; and

3 (21) "Underaged juvenile aggressor" means any child younger than  
4 ten (10) years of age for whom a report of sexual abuse has been determined  
5 to be true for sexual abuse to another child.

6  
7 SECTION 2. Arkansas Code § 12-12-505(b)(1)(A), regarding the Child  
8 Maltreatment Central Registry, is amended to read as follows:

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

11 (ii) If an offender is ~~criminally convicted for~~  
12 found guilty of, pleads guilty to, or pleads nolo contendere to an act which  
13 is the same act for which the offender is named in the central registry  
14 regardless of any subsequent expungement of the offense from the offender's  
15 criminal record, the offender shall always remain in the *central registry*,  
16 unless the conviction is reversed or vacated.

17 (iii) The department shall identify in its policy  
18 and procedures manual the types of child maltreatment that will automatically  
19 result in the removal of the name of an offender from the central registry.  
20 If an offender has been entered into the central registry as an offender for  
21 these named types of child maltreatment, the offender's name shall be removed  
22 from the central registry on reports of this type of child maltreatment when  
23 the offender has not had a subsequent true report of this type for one (1)  
24 year and more than one (1) year has lapsed since the closure of any  
25 protective services or foster care case opened as the result of this report.

26 (iv)(a) The department shall identify in its policy  
27 and procedures manual the types of child maltreatment for which an offender  
28 *can request that the offender's name be removed from the central registry.*  
29 Notwithstanding the foregoing provisions, with regard to offenders who were  
30 juveniles at the time of the act or omission that resulted in a true finding  
31 of child maltreatment, the Department shall:

32 (1) Not remove the name from the central  
33 registry if the offender was found guilty of, pled guilty to, or pled nolo  
34 contendere to a felony in circuit court as an adult for the act which is the  
35 same act for which the offender is named in the central registry unless the  
36 conviction is reversed or vacated; or

1 (2) Remove the name from the central  
 2 registry if:

3 (A) More than five (5) years have  
 4 elapsed from the date of the act or omission which caused the true finding of  
 5 child maltreatment and there have been no subsequent acts or omissions  
 6 resulting in a true finding of child maltreatment; and

7 (B) The offender can prove by a  
 8 preponderance of the evidence that the juvenile offender has been  
 9 rehabilitated.

10 (b) If an offender has been entered into the  
 11 central registry as an offender for these named types of child maltreatment,  
 12 the offender may petition the department requesting that the offender's name  
 13 be removed from the central registry when the offender has not had a  
 14 subsequent true report of this type for five (5) years and more than five (5)  
 15 years have elapsed since the closure of any protective services or foster  
 16 care case opened as the result of this report.

17 (c) The department shall develop policy and  
 18 procedures to assist it in determining whether or not to remove the  
 19 offender's name from the central registry.

20 (d) If the department denies the request for  
 21 removal of the name from the central registry, the offender may request an  
 22 administrative hearing within thirty (30) days from receipt of the  
 23 department's decision.

24  
 25 SECTION 3. Arkansas Code § 12-12-506(a)(1), regarding the disclosure  
 26 of central registry data, is amended to read as follows:

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

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

31 (i) The administration of the adoption, foster care,  
 32 children's and adult protective services programs, or child care licensing  
 33 programs of any state;

34 (ii) A federal, state, or local government entity,  
 35 or any agent of the entity, having a need for the information in order to  
 36 carry out their responsibilities under law to protect children from abuse or

1 neglect;

2 (iii) Any person who is the subject of a true  
3 report;

4 (iv) A civil or administrative proceeding connected  
5 with the administration of the Arkansas Child Welfare State Plan when the  
6 court or hearing officer determines that the information is necessary for the  
7 determination of an issue before the court or agency;

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

11 (vi) An audit or similar activity conducted in  
12 connection with the administration of such a plan or program by any  
13 governmental agency that is authorized by law to conduct the audit or  
14 activity;

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

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

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

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

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

28 (ix)(a) The Division of Child Care and Early  
29 Childhood Education of the Department of Human Services and the child care  
30 facility owner or operator who requested the registry information through a  
31 signed notarized release from an individual who is a volunteer or who has  
32 applied for employment or who is currently employed by a child care facility  
33 or who is the owner or operator of a child care facility.

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

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

3 (xi) Child fatality review panels as authorized by  
4 the department;

5 (xii) The general public, the findings or  
6 information about the case of child abuse or neglect that has resulted in a  
7 child fatality or near fatality, but the central registry may redact any  
8 information concerning siblings, attorney-client communications, and other  
9 confidential communications;

10 (xiii) A grand jury or court, upon a finding that  
11 information in the record is necessary for the determination of an issue  
12 before the court or grand jury;

13 (xiv) The current foster parents of a child who is a  
14 subject of a report;

15 (xv) Individual federal and state senators and  
16 representatives and their staff members who agree not to allow any  
17 redisclosure of information, provided that no disclosure shall be made to any  
18 committee or legislative body of any information that identifies any  
19 recipient of services by name or address;

20 (xvi) A court-appointed special advocate upon  
21 presentation of an order of appointment for a child who is a subject of a  
22 report;

23 (xvii) The attorney ad litem of a child who is the  
24 *subject of a report; and*

25 (xviii)(a) Employers or volunteer agencies for  
26 purposes of screening employees, applicants, or volunteers who are or will be  
27 engaged in employment or activity with children, the elderly, the disabled,  
28 or the mentally ill upon submission of a signed, notarized release from the  
29 employee, applicant, or volunteer.

30 (b) The registry shall release only the  
31 following information on founded reports to the employer or agency:

32 (1) That the employee, applicant, or  
33 volunteer has a founded report;

34 (2) The date the investigation was  
35 completed; and

36 (3) *The type of founded report.*

1 (B) Reports of investigative determinations that are true  
2 shall be disclosed to the division, by written report only, for purposes of  
3 enforcement of licensing laws and regulations.  
4

5 SECTION 4. Arkansas Code § 12-12-506(i), regarding the disclosure of  
6 central registry data, is amended to read as follows:

7 (i) Any records of screened-out reports of child  
8 maltreatment shall not be disclosed, except to the prosecuting attorney and  
9 appropriate law enforcement agencies, and may only be used within the  
10 department for purposes of administration of the program.  
11

12 SECTION 5. Arkansas Code § 12-12-506(j)(2), regarding the disclosure  
13 of central registry data, is amended to read as follows:

14 (2) Information on pending investigations shall be released upon  
15 request to:

16 (A) The department;

17 (B) Law enforcement;

18 (C) The prosecuting attorney's office;

19 (D) Multidisciplinary teams under § 12-12-502;

20 (E) Any licensing or registering authority including  
21 school boards, superintendents, or principals to the extent necessary to  
22 carry out ~~its~~ their official responsibilities, but the information shall be  
23 maintained as confidential; and

24 (F)(i) Individual federal and state senators and  
25 representatives and their staff members who agree not to allow any  
26 redisclosure of information.

27 (ii) However, no disclosure may be made to any  
28 committee or legislative body.  
29

30 SECTION 6. Arkansas Code § 12-12-507(d), regarding reports of  
31 suspected abuse or neglect, is amended to read as follows:

32 (d)(1) ~~In the event that~~ If the child abuse hotline receives  
33 notification that a client or a resident of any facility licensed or  
34 registered by the State of Arkansas has been subjected to child maltreatment  
35 while at such a facility, then the Department of Human Services shall  
36 immediately notify that facility's licensing or registering authority of its

1 receipt of initial notification of suspected maltreatment.

2 (2) The department may notify a school's superintendent,  
3 principal, or person in an equivalent position of the hotline's receipt of  
4 initial notification of suspected maltreatment if:

5 (A) The child abuse hotline receives notification that a  
6 public or private school employee or volunteer having direct or unsupervised  
7 contact with children has been identified as an alleged offender in a report  
8 of suspected child maltreatment; and

9 (B) The department has determined that children under the  
10 care of the alleged offender appear to be at risk of maltreatment by the  
11 alleged offender.

12 (3) The department may notify the alleged offender's employer or  
13 the person in charge of the activity of the hotline's receipt of initial  
14 notification of suspected maltreatment if:

15 (A) The child abuse hotline receives notification that a  
16 report has been received on a person who is engaged in child-related  
17 activities or employment and that person has been named as an alleged  
18 offender; and

19 (B) The department has determined that children under the  
20 care of the alleged offender appear to be at risk of maltreatment by the  
21 alleged offender.

22 (4) The department shall promulgate rules that will ensure that  
23 notification required under this subsection (d) is specifically approved by a  
24 responsible manager in the department before the notification is made.

25  
26 SECTION 7. Arkansas Code § 12-12-507(f), regarding reports of  
27 suspected abuse or neglect, is amended to read as follows:

28 (f)(1) The child abuse hotline shall accept a report when the  
29 allegations, if true, would constitute child maltreatment as defined in § 12-  
30 12-503(6) and as long as sufficient identifying information is provided to  
31 identify and locate the child or the family.

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

36 (A) Throwing, kicking, burning, biting, or cutting a

1 child;

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

3 (C) Shaking a child age four (4) or older; or

4 (D) Striking a child age seven (7) or older on the face or  
5 on the head.

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

9 (A) Shaking a child age three (3) or younger;

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

12 (C) Interfering with a child's breathing; or

13 (D) *Pinching, biting, or striking a child in the genital*  
14 *area.*

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

17 (B) The report shall be determined not to be true if the  
18 injury is a minor temporary mark or causes transient pain and was an  
19 acceptable restraint as provided in § 12-12-503(2)(C)(ii).

20 (5)(A) The child abuse hotline shall accept a report of physical  
21 abuse involving a bruise to a child even if at the time of the report the  
22 bruise is not visible but the bruising occurred:

23 (i) Within the past fourteen (14) days; and

24 (ii) As a result of physical abuse as described in  
25 subsections (f)(1) through (f)(4) of this section.

26 (B) However, the report shall not be determined to be true  
27 unless the existence of the bruise is corroborated.

28 (6) The child abuse hotline shall only accept reports of child  
29 maltreatment naming an adult as the victim if:

30 (A) The alleged offender is a caretaker of any child; and

31 (B) The person making the report is one (1) of the  
32 following:

33 (i) The adult victim;

34 (ii) A law enforcement officer;

35 (iii) The victim's counselor or therapist; or

36 (iv) The offender's counselor or therapist.

1  
2 SECTION 8. Arkansas Code § 12-12-507(g), regarding reports of  
3 suspected abuse or neglect, is amended to read as follows:

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

7 (2) If the child or the child's family resides in another state,  
8 the hotline shall screen out the report, transfer the report to the hotline  
9 of the state where the child or the child's family resides or the incident  
10 occurred, and, if requested by the other state's investigating agency, send a  
11 copy to the appropriate investigating agency in Arkansas to initiate ~~courtesy~~  
12 interviews.

13 (3) If the incident occurred in Arkansas and the victim,  
14 offender, or parents no longer reside in Arkansas, the hotline shall accept  
15 the report and the Arkansas investigating agency shall contact the other  
16 state and request ~~a courtesy~~ assistance in completing the investigation,  
17 including an interview with the out-of-state subject of the report.

18 (4)(A) If the hotline receives a report and the alleged offender  
19 is a resident of the State of Arkansas and the report of child maltreatment  
20 in the state or country in which the act occurred would also be child  
21 maltreatment in Arkansas at the time the incident occurred, the hotline shall  
22 refer the report to the appropriate investigating agency within the state so  
23 that the Arkansas investigative agency can investigate, alone or in concert  
24 with the investigative agency of any other state or country that may be  
25 involved.

26 (B) The Arkansas investigating agency shall make an  
27 investigative determination and shall provide notice to the alleged offender  
28 that, if the allegation is determined to be true, the offender's name will be  
29 placed in the central registry.

30 (C) The other state may also conduct an investigation in  
31 this state that results in the offender's being named in a true report in  
32 that state and placed in the central registry of that state.

33  
34 SECTION 9. Arkansas Code § 12-12-509(a), regarding the investigation  
35 of reports of child maltreatment and the examination of children, is amended  
36 to read as follows:



1 (a)(1) The Department of Human Services shall cause an investigation  
2 to be made upon receiving initial notification of suspected child  
3 maltreatment.

4 (2)(A) All investigations shall begin within seventy-two (72)  
5 hours.

6 (B) However, if the notice contains an allegation of  
7 severe maltreatment, then the ~~department shall immediately notify law~~  
8 ~~enforcement and the department shall initiate an investigation in cooperation~~  
9 ~~with law enforcement agencies and the prosecuting attorney~~ investigation  
10 shall begin within twenty-four (24) hours.

11 (C) Notification of any report of child maltreatment will  
12 be provided within five (5) business days to the:

13 (i) Legal parents of any child in foster care who is  
14 named as an alleged victim or offender;

15 (ii) Attorney ad litem of any foster child named as  
16 the victim or offender; ~~and~~

17 (iii) Attorney ad litem of all other children in the  
18 same foster home if the maltreatment occurred in the foster home;

19 (iv) Local law enforcement on allegations of severe  
20 maltreatment; and

21 (v) The prosecuting attorney on allegations of  
22 severe maltreatment.

23 (D) At the initial time of contact with the alleged  
24 offender, the investigator shall advise the alleged offender of the  
25 allegations made against the alleged offender in a manner that is consistent  
26 with the laws protecting the rights of the person who made the report.

27 (3)(A) The prosecuting attorney may provide written notice to  
28 the department that the department does not need to provide notification of  
29 the initial maltreatment report to the prosecuting attorney's office.

30 (B) Upon receiving the notification, the department shall  
31 not be required to provide notification of the initial maltreatment report to  
32 the prosecuting attorney's office.

33  
34 SECTION 10. Arkansas Code § 12-12-509(d), regarding the investigation  
35 of reports of child maltreatment and the examination of children, is amended  
36 to read as follows:

1 (d)(1) An investigative determination shall be made in each  
2 investigation within thirty (30) days regardless of whether the investigation  
3 is conducted by the Department of Human Services, the ~~Family Protection Unit~~  
4 Crimes Against Children Division of the Department of Arkansas State Police,  
5 or local law enforcement.

6 (2) However, this procedural requirement shall not be considered  
7 as a factor to alter the investigative determination in any judicial or  
8 administrative proceeding.

9 (3) Investigations involving out-of-home offenders which are  
10 determined to be true may be extended up to thirty (30) additional days to  
11 allow the investigator to ascertain:

12 (A) The names and conditions of any minor children of the  
13 alleged offender; and

14 (B) Whether minor children of the alleged offender have  
15 been maltreated or are at risk of maltreatment; and

16 (C) To the extent practical, whether children previously  
17 or currently under the care of the alleged offender have been sexually abused  
18 or are at risk of sexual abuse.

19 (4) No investigations shall be transferred to inactive status  
20 because investigators are awaiting documentary evidence.

21  
22 SECTION 11. Arkansas Code § 12-12-510(a), regarding investigative  
23 powers for child maltreatment, is amended to read as follows:

24 (a)(1) The person conducting the investigation shall have the right to  
25 enter into or upon a home, school, or any other place for the purpose of  
26 conducting and interviewing or completing the investigation required by this  
27 subchapter.

28 (2) No publicly supported school, facility, or institution may  
29 deny access to any person conducting a child maltreatment investigation.

30 (3) Failure to comply with this section may subject the school,  
31 facility, or institution to contempt sanctions and reimbursement of  
32 attorney's fees.

33  
34 SECTION 12. Arkansas Code § 12-12-510(g), regarding investigative  
35 powers for child maltreatment, is amended to read as follows:

36 (g) Upon request by the investigating agency, any school, day care

1 center, child care facility, residential facility, residential treatment  
2 facility, or similar institution shall provide the investigator with:

3 (1) the The name, date of birth, social security number, and  
4 last known address and phone number of any person identified as an alleged  
5 offender if the alleged maltreatment occurred at that school, center, or  
6 facility; and

7 (2) The name and address of any witnesses to the alleged  
8 maltreatment if the maltreatment occurred at that school, center, or  
9 facility.

10  
11 *SECTION 13. Arkansas Code § 12-12-512, as amended by Act 172 of 2005,*  
12 *is amended to read as follows:*

13 *12-12-512. Child maltreatment investigative determination - Notice of*  
14 *finding - Amendment and appeal.*

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

17 *(1)(A)(i) Unsubstantiated.*

18 *(ii) This determination shall be entered when the*  
19 *allegation is not supported by a preponderance of the evidence.*

20 *(B)(i) ~~There can be no disclosure of unsubstantiated~~*  
21 *~~reports except~~ Unsubstantiated reports shall be confidential and shall be*  
22 *disclosed only to:*

23 *(a) The prosecutor;*

24 *(b) A subject of the report;*

25 *(c) A court if the information in the record*  
26 *is necessary for a determination of an issue before the court;*

27 *(d) Individual federal and state senators and*  
28 *representatives and their staff members, but no disclosure may be made to any*  
29 *committee or legislative body;*

30 *(e) Law enforcement agencies; ~~and~~*

31 *(f) Any appropriate licensing or registering*  
32 *authority; and*

33 *(g) Adult protective services.*

34 *(ii) Any person or agency to whom disclosure is made*  
35 *shall not disclose to any other person reports or other information obtained*  
36 *pursuant to subdivision (a)(1)(B)(i) of this section; or*

1 (2)(A)(i) True.

2 (ii) This determination shall be entered when the  
3 allegation is supported by a preponderance of the evidence, provided that for  
4 any act or omission of maltreatment which would be a criminal offense or an  
5 act of delinquency, any defense or affirmative defense which would be  
6 applicable to the criminal offense or delinquent act is also cognizable in a  
7 maltreatment proceeding.

8 (B)(i) A determination of true but exempted, which means  
9 that the offender's name shall not be placed in the Central Registry, shall  
10 ~~not~~ be entered if:

11 (a) A parent practicing his or her religious  
12 beliefs does not, for that reason alone, provide medical treatment for a  
13 child, but in lieu of treatment the child is being furnished with treatment  
14 by spiritual means alone, through prayer, in accordance with a recognized  
15 religious method of healing by an accredited practitioner; or

16 (b) The offender is an underaged juvenile  
17 aggressor.

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

20 (a) Any legal remedies, including the  
21 authority to initiate legal proceedings in a court of competent jurisdiction;  
22 and

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

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

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

33 (c)(1)(A)(i) In every case in which a report is determined to be true,  
34 the department shall notify each subject of the report of the determination.

35 (ii) If the offender is a juvenile age ten (10) or  
36 older and is in foster care, the department shall notify the juvenile's

1 public defender or counsel for the juvenile and the legal parents or legal  
2 guardians of the offender.

3 (iii) If the offender is a juvenile age (10) or  
4 older, the department shall notify the legal parents or legal guardians of  
5 the offender.

6 (B) Notification shall be in writing by certified mail,  
7 restricted delivery, or by a process server.

8 (C) Notification to offenders who were adults at the time  
9 of the act or omission that resulted in the finding of child maltreatment  
10 shall include the following:

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

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

15 (iii) A statement that the request must be made to  
16 the department within thirty (30) days of receipt of the ~~hand-delivery~~  
17 service or certified mailing of the notice of determination; and

18 (iv) The name of the person making notification, the  
19 person's occupation, and where he or she can be reached.

20 (D) Notification to offenders who were juveniles at the  
21 time of the act or omission that resulted in the finding of child  
22 maltreatment shall include the following:

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

25 (ii) A statement that this matter has been referred  
26 for an automatic administrative hearing which can only be waived by the  
27 juvenile offender in writing; and

28 (iii) The name of the person making notification,  
29 the person's occupation, and where he or she can be reached.

30 (2) The administrative hearing process must be completed within  
31 one hundred eighty (180) days from the date of the receipt of the request for  
32 a hearing, provided that:

33 (A) Delays in completing the hearing that are attributable  
34 to the petitioner shall not count against the one-hundred-eighty-day limit;

35 (B) Failure to complete the hearing process in a timely  
36 fashion shall not deprive the department or a court reviewing the child

1 maltreatment determination of jurisdiction to make a final agency  
2 determination or review a final agency determination pursuant to the Arkansas  
3 Administrative Procedure Act, § 25-15-201 et seq.; and

4 (C)(i) The one-hundred-eighty-day limit shall not apply if  
5 there is an ongoing criminal or delinquency investigation or criminal or  
6 delinquency charges have or will be filed regarding the occurrence that is  
7 the subject of the child maltreatment report.

8 (ii) In those cases, the administrative hearing  
9 shall be stayed pending final disposition of the criminal or delinquency  
10 proceedings.

11 (iii) It shall be the duty of the petitioner to  
12 report the final disposition of the criminal or delinquency proceeding to the  
13 department.

14 (iv) Each report shall include a file-marked copy of  
15 the criminal or delinquency disposition.

16 (v) The request for administrative hearing shall be  
17 deemed waived if the petitioner fails to report the disposition of the  
18 criminal or delinquency proceedings within thirty (30) days of the entry of a  
19 dispositive judgment or order.

20 (vi) If the criminal or delinquency proceedings have  
21 reached no final outcome within twelve (12) months of the filing of the  
22 administrative appeal, the administrative appeal will be deemed waived if the  
23 petitioner fails to provide a written statement of the status of the criminal  
24 or delinquency proceedings every sixty (60) days and a disposition report  
25 within thirty (30) days of the entry of a dispositive judgment or order.

26 (3) When the department conducts administrative appeal hearings,  
27 the chief counsel of the department is authorized to require the attendance  
28 of witnesses and the production of books, records, or other documents through  
29 the issuance of subpoenas when that testimony or information is necessary to  
30 adequately present the position of the department, the investigating  
31 protective services agency, or the alleged offender or adult subject of a  
32 report.

33 (4) If the petitioner prevails at the administrative hearing or  
34 circuit court hearing and the report is changed from true to unsubstantiated,  
35 upon request by the petitioner, the department shall tender a list of persons  
36 to whom a disclosure had previously been made that the report was true.

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

3 (e) Administrative hearing decisions and all exhibits submitted at the  
4 hearing are confidential and may be used or disclosed only as provided in §  
5 12-12-506(a)(2)(A).

6 (f)(1) The Office of Appeals and Hearings of the Department of Human  
7 Services shall designate the sites to be used for videoconference hearings.

8 (2) The office shall designate sites within ten (10) miles of  
9 the following cities:

10 (A) Arkadelphia;

11 (B) Booneville;

12 (C) Conway;

13 (D) Fayetteville;

14 (E) Jonesboro;

15 (F) Little Rock; or

16 (G) Warren.

17 (3) The Office of Appeals and Hearings may, in its discretion,  
18 designate additional sites for videoconference hearings.

19 (g)(1) If any party requests an in-person hearing within thirty (30)  
20 days from the date that the party receives notification under subsection (c)  
21 of this section, then the in-person hearing shall be conducted in an office  
22 of the Department of Human Services nearest to the petitioner's residence,  
23 unless the hearing officer notifies the parties that the hearing will be  
24 conducted via videoconference.

25 (2) Sites for videoconference hearings shall include the  
26 location designated by the Office of Appeals and Hearings that is nearest to  
27 the petitioner's residence.

28 (3) The hearing officer and other parties may agree to appear at  
29 the location designated by the Office of Appeals and Hearings or at any other  
30 designated hearing locations that are convenient to them.

31 (h)(1) Certified copies of judgments or adjudications from a court of  
32 competent jurisdiction dealing with the same subject matter as issues  
33 concerned in the administrative hearing may be filed with and considered by  
34 the hearing officer in a motion for summary judgment.

35 (2)(A) A decision on any identical issue shall be rendered  
36 without a hearing.

1 (B) However, if the judgment or adjudication of the court  
2 is reversed or vacated and notice of the reversal or vacation is provided to  
3 the department, the department shall set the matter for hearing.

4  
5 SECTION 14. Arkansas Code § 12-12-516, regarding the protective  
6 custody of children, is amended to add an additional subsection to read as  
7 follows:

8 (e) Schools, residential facilities, hospitals, and other places that  
9 a child may be located shall not require a written court order for the  
10 department to take a seventy-two (72) hour hold under this section, § 9-27-  
11 313, or § 12-12-516.

12  
13 SECTION 15. Arkansas Code § 12-12-517 is amended to read as follows:  
14 12-12-517. Liability.

15 (a) Any person or agency required to participate and acting in good  
16 faith in making notification, the taking of photographs or ~~X-rays~~  
17 radiological tests, or the removal of a child while exercising protective  
18 services shall be immune to suit and to liability, both civil and criminal.

19 (b) All persons making notification not named in this section, if  
20 acting in good faith, shall be immune from liability.

21 (c) Any publicly supported school, facility, or institution acting in  
22 good faith pursuant to § 12-12-510(a)(1)(2) shall be immune from liability.

23  
24  
25 /s/ Madison

26  
27  
28 APPROVED: 4/05/2005



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